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Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

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FCC 74-688

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 97 TO MAKE SPECIAL CALL SIGNS AVAILABLE TO STATIONS LICENSED TO AMATEUR EXTRA CLASS OPERATIONS	Docket No. 20092

NOTICE OF PROPOSED RULEMAKING

(Adopted June 26, 1974; Released July 2, 1974)

BY THE COMMISSION:

1. Notice of Proposed Rule Making is hereby given in the above captioned matter.

2. Frequently, the Commission receives a request from an amateur radio operator asking to have a specific call sign, or call sign format, assigned to his amateur radio station. The reasons given to justify these requests vary, but the requests in themselves indicate the very special significance a station call sign can hold for an amateur operator. Under the present rules, there are no provisions for satisfying requests of this type.

3. While we would like to be able to assign every amateur station the exact call sign of the licensee's choice, there are practical limitations imposed by administrative considerations. The assignment of station call signs on a request basis would require new processing systems requiring more clerical manpower, since most call assignments are now made by automatic data processing methods. Additionally, more manpower would be required to resolve conflicts arising from the inevitable cases of several amateurs desiring to obtain the same particular call sign. For reasons such as these, under our present systems and resources, we could not possibly offer to assign call signs on a request basis to all of the 265,000 amateur radio stations now licensed.

4. Until such time as the necessary systems and resources may become available, we believe it is possible to satisfy at least some of these requests. The Amateur Extra Class deserves first consideration in this matter. This group represents the highest skill level licensed in the Amateur Radio Service. Since they also represent the operator class having the smallest number of stations (over 14,000), and since many, if not most, of these stations already have preferred call signs or call signs of long standing, the number of requests for special call signs should come within reasonable limits. Making special call signs available to this group should provide amateurs, and the Commission, with information and experience in this matter so any future possibility of expanding the system can be better considered. Moreover, it would offer amateurs a way to obtain the call sign of their choice for their station.

109-001—74——1

5. Therefore, we propose to amend the applicable sections of Part 97, as shown in the Appendix. The current 25 year eligibility requirement for a 1×2 (single letter prefix, two letter suffix) call sign would be deleted. The amateurs meeting the 25 year requirement have had ample opportunity to exercise this option. The manpower recovered from deleting this provision can be applied to administering the proposed new system. Under these proposals, *any* Amateur Extra Class licensee would be eligible to apply for and receive *any* available station call sign of his choice, including 1×2, 1×3, or 2×3 formats, consistent with the numeral designated for the area. The limitations on only one 1×2 format call sign per licensee, except for those already holding more than one, would remain. However, the same licensee would be eligible to also hold one or more 1×3 or 2×3 format station call signs.

6. The proposals would undoubtedly result in the limited number of 1×2 format call signs becoming rapidly exhausted. This eventuality is only a few years off anyway, since the number of amateurs completing 25 years in the Amateur Radio Service should begin to increase sharply, reflecting changes in the operator license structure in the early 1950's. For this reason, we are proposing to delete the availability of *in memoriam* call signs to club stations. This will make a few more 1×2, and even desirable 1×3, format call signs available for the proposed system. Additionally, verification that the deceased former licensee was actually a member of the organization has, at times, been difficult for both the club and the Commission. Again, the manpower recovered from this deletion can be applied to the proposed new system.

7. The Commission has a number of petitions on file concerning the assignment of amateur station call signs. This proposal is not intended to preempt future consideration of those petitions. In fact, should our proposal be adopted, the resulting experience will enable us to better consider these petitions. Only call signs having prefixes in the series now normally assigned to primary and secondary stations would be available initially, although additional prefix series may be added at a future date. Available immediately would be those having the prefix K, W, WA, and WB, in addition to those call signs normally assigned to stations not within the 48 contiguous United States. For stations outside the 48 contiguous United States, only a choice of call sign suffix could be made.

8. Authority for the proposed rule changes herein is contained in §§ 4(i) and 303 of the Communications Act of 1934, as amended.

9. Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before October 9, 1974 and reply comments on or before October 24, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision on the rules which are proposed herein, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

10. In accordance with the provision of § 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all com-

ments, pleadings, briefs, or other documents shall be furnished the Commission.

11. All filings in this proceeding will be available for examination by interested parties during regular business hours in the Commission's public reference room at its headquarters in Washington, D.C. (1919 M Street, N.W.).

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Part 97, of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. § 97.51(a)(3) is deleted and reserved, and § 97.51(a) and § 97.51(a)(5) are amended to read as follows:

§ 97.51 *Assignment of call signs.*

(a) The Commission will systematically assign every amateur radio station a call sign consisting of a sequence of two letters, a numeral, and three letters, with the following exceptions:

* * * * * * *

(3) [Reserved]

* * * * * * *

(5) Upon request for a Special Call Sign, any available unassigned station call sign may be assigned to a primary or secondary station licensed to an Amateur Extra Class operator.

* * * * * * *

2. § 97.53 is revised to read as follows:

§ 97.53 *Policies and procedures applicable to the assignment of call signs.*

(a) An eligible licensee will be permitted to hold only one two-letter call sign. However, licensees who, by reason of former rule provisions, presently hold more than one such call sign may continue to hold those call signs in the same call sign areas.

(b) Subject to availability, a primary station will be assigned the same type of call sign as the one relinquished, upon modification of license to show the fixed station operation location in a different call sign area.

(1) Stations will not be assigned specific call signs of the licensee's choice, nor counterpart call signs (call signs having identical suffix letters), under this provision. However these limitations will not preclude qualification for a Special Call Sign.

(2) When a two-letter call sign is not available in the new call sign area, an eligible licensee may be assigned an available unspecified three-letter call sign.

(c) Call signs which have been unassigned for more than one year will normally be available for reassignment.

FCC 74-689

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TRUCKING ASSOCIATION, INC., WASHINGTON, D.C., COMPLAINANT *v.* AMERICAN TELEPHONE AND TELEGRAPH CO., NEW YORK, N.Y., DEFENDANT REGULATORY POLICIES CONCERNING RESALE AND SHARED USE OF COMMON SERVICES AND FACILITIES	Docket No. 19746 Docket No. 20097 RM-1997 RM-2218

NOTICE OF INQUIRY AND PROPOSED RULEMAKING

(Adopted June 26, 1974; Released July 5, 1974)

BY THE COMMISSION:

I. INTRODUCTION

1. The Commission has before it a number of matters which raise in one form or another the basic question of whether, and under what conditions, subscribers of the various service offerings of communications common carriers should be allowed to resell such services to others or to participate with others in the sharing or joint use of such services, and, if so, whether and to what extent the Commission should regulate any such resale or shared use. Resolution of this question requires the Commission to define on a broad basis the role of the middleman in the provision of communications services to the using public. While the middleman has assumed an important role in nearly all aspects of commerce throughout our nation's history, in the field of communications it has been the tradition, generally, that the carriers owning and operating transmission facilities supply a complete communications service directly to the ultimate user. Only relatively recently has this tradition, exemplified in the tariffs of the established carriers, been questioned.

2. The following is a summary of the more important tariff provisions governing resale and shared use of major carrier service offerings: With certain exceptions Private Line Services obtained from the American Telephone and Telegraph Company (AT&T) or The Western Union Telegraph Company (Western Union) may not be resold nor may the customer use the service to transmit communications for others. A customer for most voice-grade and under private line services may, however, enter into an arrangement with others to share the service obtained. AT&T's Wide Area Telecommunications Service (WATS) is not available for resale, third party traffic or shared use, except when used to provide telegram service. Message Toll Service (MTS) may not be resold; however third party traffic

is permitted so long as the customer does not derive a profit from provision of transmission service.[1]

3. From the foregoing summary it is apparent that the opportunity for entities to obtain services and facilities from the established carriers to provide an augmented communications service for hire to the public is severely limited. Nevertheless a considerable number of entities have shown an interest in offering augmented communications services in such a manner. This interest has been spurred by the public's burgeoning demand for fast, efficient and low cost access to information in convenient format and the concomitant development of innovative communications technology to meet that demand. As we found in our *Specialized Common Carrier Inquiry*,[2] the market for non-voice communications is growing at a rapid pace, is largely undeveloped and will be satisfied only through the application of innovative communications technology. In this area of rapid technological and market development, we believe that both established carriers and the new entities which offer or propose to offer specialized services can contribute to breakthroughs in communications technology and plans for more efficient application of new and existing technology. However, entities other than the carriers who originate technological advances or propose new systems configurations may not be in the best position for a number of reasons deriving from regulatory and procedural as well as economic limitations, to undertake the construction of new lines of communication. Public enjoyment of state-of-the-art communications technology and full utilization of existing capacity may thus require that independent enterprises devoted to marketing, retailing, brokerage and related functions be given a greater role in the communications industry.

4. We are mandated by the Communications Act of 1934 to regulate interstate and foreign commerce in communications so as to make available to all the people of the United States rapid, efficient nationwide and worldwide communications services with adequate facilities at reasonable charges (47 U.S.C. § 1). As has been noted, the question of the availability of services for resale or shared use and the regulation thereof underlies various matters before us. It would be inappropriate to consider this question in the context of some particular item, such as an application for authorization of service, a tariff filing or a complaint against a particular carrier. The nature of the issues that must be considered, their complexity, their basic impact on the overall structure of the industry, the number and diversity of parties interested in the issues as well as the expedition with which they must be resolved compels the conclusion that the fulfillment of our regulatory mandate requires that the questions that have been raised in the context of various discrete matters before us be considered in a broad rulemaking proceeding. We are therefore initiating this general inquiry and rulemaking proceeding to consider our policy with regard to questions concerning the resale and shared use of common carrier services and facilities. Having received the information, opinions

[1] For private line services see AT&T's Tariff F.C.C. No. 260 Section 2.2.1 and 2.2.3, and WU's Tariff F.C.C. No. 254 Sections 2.2.1 and 2.2.3. For WATS see AT&T's Tariff F.C.C. No. 259, Section 2.2.1. For MTS see AT&T's Tariff F.C.C. No. 253 Section 2.2.1.

[2] Docket No. 18920, First Report and Order, 29 FCC 2d 870 (1971).

and recommendations of all interested parties we will be in a position to take appropriate action, including the establishment of policy guidelines, by rule or otherwise, the recommendation of any desirable legislative changes or the modification of existing carrier practices.

5. Before proceeding to discuss the issues to be considered and to set forth specific questions to be addressed, we believe it would be helpful if we described some of the existing and proposed communications services provided by means of communications facilities obtained from established common carriers.

II. COMMUNICATIONS SERVICES PROVIDED THROUGH INTERMEDIARIES

a. "Value Added" Proposals

6. A major interest in the resale of communications facilities and services has been expressed in proposals to lease wideband interexchange lines from the established communications common carriers to be utilized in the offering of nationwide computer-switched communications networks for the transmission of non-voice information. An example of this type of operation is that proposed by Packet Communications, Inc. (PCI).[3] PCI intends to institute and operate a communications network providing terminal-to-computer and computer-to-computer data communications utilizing what is known as "packet-switching technology". PCI's network will involve, initially, one 50 Kilobit per second line linking each of a selected group of major population centers. The customer's computers are connected to this network by PCI-provided mini-computers or message concentrators which accept messages from computers they serve, subdivide and reformat the messages into "packets" or short bursts of information bits, store the packets as necessary and forward them to the concentrator serving the destination computer where they are reassembled into messages and sent on to the appropriate computers.[4] Terminal access to the mini-computers or message concentrators may be accomplished by the subscriber via the public telephone system or, in the case of large users, via a leased line. The network is supervised by two Network Operations Centers which, with the mini-computers, determine routing, re-routing if necessary, check packets for errors, arrange for retransmission of packets until errors are eliminated, keep track of transmission facility reliability, and perform billing functions. PCI expects its service to provide enhanced accuracy, reliability and privacy of communication, significantly increased, more economical utilization of transmission line capacity, as well as end-to-end-responsibility and communications management services.

7. Graphnet Systems, Inc. (Graphnet)[5] proposes to establish a similar network primarily devoted to the specialized field of terminal-to-terminal communications and capable of accommodating a great variety of terminals such as telecopiers, telex and TWX printers. The subscriber, who pays a small monthly network access charge as

[3] Section 214 Application granted, 43 F.C.C. 2d 922 (1973).
[4] PCI will offer no data processing services (i.e., storing, retrieving, sorting, merging and calculating of data) but will utilize such data processing as is necessary to perform the function of message switching.
[5] Section 214 Application granted, 44 F.C.C. 2d 800 (1974).

well as a rate based on minutes of use, may choose various methods of delivery including messenger if no terminal is available at his message's destination. Applications have also been received from the MCI Data Transfer Corporation (MDT) (FCC File No. P–C–8589) and Telenet Communications Corp.[6] Others have indicated that they will be filing similar applications in the near future.

b. Line Sharing or Joint Use Arrangements

8. AT&T and Western Union provide in their Private Line Service tariffs that customers who have need of voice grade and under private lines services (for their own use) may enter into arrangements with other users for the sharing of the capacity of the line or lines jointly used, the proportion being determined by agreement between the customer and joint users. The Commission has not formally investigated the extent to which the joint user provisions are utilized nor reviewed arrangements between customers and joint users except in a few isolated instances which have been brought to our attention. Sharing arrangements can range from the simple cooperative use of a single channel from one point to another, or the provision of discrete subchannels derived from a voice grade channel, up to complex networks which the joint users may access from a number of points and which may be conditioned for the carriage of communications of a specialized nature. One of the more complex arrangements which has been brought to our attention is being organized by the RCA Corporation. Originally RCA proposed to commence operations with approximately 40 to 45 voice grade links serving approximately 35 cities. The presently proposed network is more modest, providing for service between five cities coast to coast—one voice grade circuit linking each, forming a continuous, distributed communications network. The system is to be managed by RCA Global Communications, Inc., and RCA will provide the multiplexing equipment (which will not be of RCA manufacture). The users may attach any additional terminal equipment desired so long as no harm results to the system. Apart from the pro-rata share of the transmission charges, the joint user pays RCA a management fee which is computed on the basis of mileage of the network used, number of access points and speed of communication desired.

9. Another arrangement currently in operation provides the data communications user a service much the same as that proposed by PCI and others (although it is provided over low speed voicegrade lines). Tymeshare, Inc., a major data communications and processing enterprise, operates a national and international data communications network called Tymnet. As of April, 1973, Tymnet connected 54 cities with 37 large scale computers utilizing over 40,000 miles of leased telephone lines. Under a joint use arrangement other companies have been allowed to access their own computers via Tymnet. In such instances Tymnet's computers are used to route data but do no processing. The user pays the common carrier for its share of the transmission line usage and then pays Tymeshare on the basis of terminal connect time, number of connections made and the volume of information transmitted. The Tymnet-type sharing operation is significant in that as

[6] Section 214 Application granted, 46 F.C.C. 2d — (1974).

the joint user is not provided with his own discrete channels, the number of possible users is limited only by the aggregate use made of the available capacity by all users.

c. Facsimile Communication Networks

10. Another identifiable class of resale operations are enterprises which organize facsimile communications networks, utilizing telecopiers and the message toll telephone system, for the use of the general public. Typically the telecopiers are placed with established businesses and the network organizer provides each agent with a directory containing the location and telephone number of all other outlets. The licensee or agent then holds himself out to the public to send communications in facsimile form to any other location on the network, charging the user a fee plus the charge for the telephone call by which transmission is effectuated. The fee is then split with the receiving agent and the network organizer. It is believed that some of these operations are extensive, involving over 300 outlets coast-to-coast.

d. Hybrid Communications and Processing Services

11. There are also a considerable number of services available which provide a mixture of information communications and processing. An example is services which arrange for the procurement and communication of permits, documents and money orders for the trucking industry. Others serve banks, the securities industry and law firms. Transmission is typically by means of the message toll telephone system accessed by specialized terminals such as telecopiers although WATS and other communications services may sometimes be involved.[7]

12. For purposes of defining the breadth of our examination of hybrid service offerings we refer to the guidelines set forth in our *Computer Inquiry*[8] to distinguish those offering communications from those offering essentially a processing service:

> If . . . the package offering is oriented essentially to satisfy the communications or message-switching requirements of the subscriber, and the data processing feature or function is an integral part of and incidental to message-switching, the entire service will be treated as a communications service for hire, whether offered by a common carrier or non-common carrier and will be subject to regulation under the Communications Act. One applicable test will be whether the service, by virtue of its message-switching capability, has the attributes of point-to-point services offered by conventional communications common carriers and is, basically, a substitute therefor.[9]

While we were there considering the function of the computer in the provision of a communications service, the principle involved also extends to examination of other processing operations such as formatting, arranging service with governmental agencies, providing needed forms, etc., in determining whether the overall service should be considered communications or processing for our regulatory purposes.

e. Single Customers Tariff Provisions

13. There are exceptions to the prohibition on the resale of private line services (known as the "single customer" provisions in the tariffs

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[7] The Commission regularly receives inquiries in regard to the initiation of various services of a hybrid nature which would utilize such services as WATS, MTS, TELEX and TWX as well as private line services.

[8] Final Decision and Order, Docket No. 16979, 28 F.C.C. 2d 267 (1971).

[9] Tentative Decision, Docket No. 16979, 28 FCC 2d 291 (1970), para. 42.

of AT&T and Western Union) which allow certain customers to obtain communications services for specified groups of users [10] and allow the specified user groups—such as the airlines, stock exchanges, and electric power pools—to enjoy any administrative convenience that may result from buying communications services in conjunction with others, but more importantly, may allow communications services to be ordered under TELPAK discount rates which would not be available to the users taken singly.

14. We have already initiated an investigation [11] under Section 202 (a) of the Act to determine if these provisions, in that they extend special tariff treatment to specified users, involve under discrimination. We will discuss below, the relationship between the issues in that investigation and those to be considered in this proceeding.

III. DISCUSSION OF ISSUES

a. Resale

15. At the threshold in this inquiry we meet the question of whether and to what extent the services and facilities of communications common carriers ought to be available for use by intermediaries in offering augmented communications services to the public. Of principle concern is the availability of private line services which are presently offered under the following conditions set forth in AT&T's Tariff F.C.C. No. 260 and Western Union's Tariff F.C.C. No. 254:

> 2.2.1 A private line service may be used . . .
> (A) For the transmission of communications to or from the customer and relating directly to the customer's business.
>
> * * * * * * *
>
> 2.2.3 Private line services shall not be used for any purpose for which a payment or other compensation shall be received by . . . the customer . . . or in the collection, transmission or delivery of any communications for others . . .
>
> * * * * * * *
>
> 2.5 *Definitions*
>
> * * * * * * *
>
> *Customer* . . . No one may be a customer for a private line service who does not have a communications need of his own.[12]

16. The carriers have never been called upon, either formally or informally, to justify these tariff provisions. In view of the currently developing interest in securing private line services for resale we believe that it is now incumbent upon us to question whether the public interest is served by a continuation of these restrictions on the availability of common carrier facilities and services. A primary issue to be considered in this proceeding, then, is whether the above-quoted tariff provisions are just and reasonable under Section 210(b) and not unduly discriminatory under 202(a) of the Communications Act of 1934. The carriers are here given an opportunity to respond with evidence in justification of their tariffs and other participating parties have opportunity to comment on the carrier's presentations.

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[10] AT&T Tariff F.C.C. No. 260, Section 2.2.1 and Western Union Tariff F.C.C. No. 254, Section 2.2.1.

[11] American Trucking Association v. AT&T, Docket No. 19746, 41 FCC 2d 2 (1973).

[12] Exceptions to these provisions, which are the subject of our investigation in Docket No. 19746, have been deleted.

17. Our inquiry of course goes beyond an examination of the presently effective tariffs and we are inviting all recommendations for tariff structures which will best serve whatever public interest there may be in securing carrier services and facilities for resale purposes. We have reason to believe that the carriers themselves may wish to suggest changes to their present tariffs. For example, AT&T has requested permission [13] to amend its private line tariff to allow resale and third party traffic where the customer intends to provide a "Composite Data Service", which is defined in the proposed tariff as follows:

Composite Data Service

The term "Composite Data Service" denotes an offering which combines the use of computers and terminal equipment with the use of communication services of the Telephone Company to provide a single integrated data service for data processing and data message switching, or for data message switching.

It would be premature at this time for us to comment on whether the proposed tariff changes applicable to Composite Data Service Vendors meet the standards of reasonableness under Section 201(b) and 202(a) of the Act. Pending action on these filed tariff changes for the purpose of this proceeding we will consider such proposal as a recommended tariff change to be considered in the same manner as other recommendations as may be put forth by participants in this proceeding. We expect that all recommendations for desirable tariff changes will be fully justified in such manner as to permit the Commission to determine if such change would meet the standard of reasonableness contained in Section 201(b) and 202(a) of the Act.

18. While we have discussed the resale issue in terms of private line services, we want to make clear that our inquiry includes consideration of what our policy should be in regard to resale of all communications common carrier services. Proposals and inquiries received by the Commission as well as reports of services in operation lead us to believe that there is substantial interest in subscribing to MTS, WATS, Telex, and possibly other services, for resale purposes. There may also be interest in making the more specialized service of the established carriers themselves available for resale by subscribers. For example AT&T has recently filed a new tariff for a service to be known as Dataphone Digital Service [14] which is to be provided over a discrete digital network utilizing in part a technology known as Data Under Voice (DUV).[15] This proposed tariff does provide for utilization of the DDS network in the provision of service to the public by other common carriers under certain conditions. We believe that there may be interest in the resale of various common carrier services and will expect participants in this proceeding to carefully specify the services to which their comments are applicable.

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[13] AT&T Application 931. In a separate action (Special Permission No. 6827, November 14, 1973) this request has been granted under delegated authority by the Chief, Common Carrier Bureau and the tariff changes may be filed on 60 days notice. The new tariff provisions regarding Composite Data Service were filed on June 19, 1974.

[14] Tariff F.C.C. No. 267 filed March 19, 1974 in Transmittal No. 11990.

[15] DUV allows a presently unused segment of the radio frequency bandwidth on existing 4 GHz and 6 GHz microwave channel to be used to transmit information in digital form thus increasing the utilization of existing facilities as well as the microwave radio spectrum. Authority to construct facilities to connect five cities was granted on June 21, 1973, P.C. 8490, 41 F.C.C. 2d 586 (1973). Now on file is an application to connect an additional 19 cities.

b. Line Sharing or Joint Use Arrangements

19. As we have noted above, a customer for private line service can effectuate a line sharing arrangement which may make available to a more or less limited number of communications users a broad range of services from discrete low speed point-to-point linked communication, up to complex computer-switched networks conditioned for specialized communications. The principal advantage of sharing arrangements is economic—both the customer and the joint users enjoy communications capacity at a lower cost than if each were being supplied directly by the carrier. In some cases, however, certain users and user groups may also enter into sharing arrangements primarily to gain access to communications networks of a specialized nature. We believe that sharing arrangements as are now possible result in greater access to and fuller utilization of our nation's communications capacity and we believe their continuation is warranted.

20. In this inquiry we will consider four broad issues with regard to sharing arrangements. These are: 1) determination of the justness and reasonableness of tariff provisions under which sharing is presently permitted,[16] 2) examination of the public interest in allowing sharing on above-voice grade private line services and other carrier services.[17] 3) a determination of the extent to which sharing arrangements would still be useful and desirable in the event that we find that resale of facilities should be more widely permitted, and 4) inquiry into the need for regulation of sharing arrangements themselves.

21. With respect to this latter issue, Microwave Communications, Inc. (MCI) in its Petition for Rulemaking (RM. 1997) filed June 13, 1972 requested that we adopt a rule which would spell out procedures to be followed and standards to be met by bona fide sharers of the cost of communications facilities in terms similar to those of Section 93.4 of our Rules. The referenced rules, dealing with the cooperative use of radio stations in the Land Transportation Services, basically require cooperative arrangements to be reported to the Commission so that we can insure that cooperation is on a cost-sharing, non-profit basis.[18] In

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[16] For example the customer who initiates a sharing arrangement must have a communications need of his own. Tariff provisions affecting sharing are found in Section 2.2.1 & 2.5, 3.1.5 of AT&T's Tariff F.C.C. No. 260 and Western Union's Tariff F.C.C. No. 254.

[17] Sharing is not permitted on services which utilize, in whole or in part, above voice-grade channels (Series 7000, 8000 or 10,000 as well as services obtained under Series 5000).

[18] See the following:

§ 93.4 Cooperative use of fixed radio stations.

(a) Licensees and persons eligible to become licensees of operational fixed stations under this part may make cooperative use of such licensed facilities under the conditions and subject to the limitations specified in this section.

* * * * * * *

(d) Licensed facilities may be cooperatively used under this section only (1) without charge to any of the participants in its use, or (2) on a nonprofit, cost-sharing basis pursuant to a written contract between the parties involved which provides that the licensee shall have control of the licensed facilities and that contributions to capital and operating expenses are accepted only on a cost-sharing nonprofit basis, prorated equitably, among all participants using the facilities, or (3) on a reciprocal basis (e.g., use of one licensee's facilities in exchange for the use of another licensee's facilities) without charge for either capital or operating expense, pursuant to a written contract between the licensees involved.

(e) Each licensee sharing its facilities under this section shall maintain records showing the cost of the facilities and their operation and use, the charges made to and payments made by each of those using the facilities or contributing to their capital

(Continued)

this proceeding we will consider adopting procedures and guidelines to be followed by carriers and customers wishing to share the cost of private line facilities.

c. Single Customer Tariff Provisions

22. As had been noted, the single customer tariff provisions, found at Section 2.2.1 of the private line tariffs of both AT&T and Western Union permit certain customers to order communications services for users having a specified relationship to the customer. For example, stock exchanges can order services

"for the transmission of communications to or from an exchange member located on the floor of such exchange and relating directly to the business of the member."

Aeronautical Radio, Inc. may order service "for the transmission of communications to, from, within and between air carriers." In effect, these provisions are exceptions to the prohibitions on resale and third party traffic and the conditions on the availability of line sharing, which are the subject matter of this proceeding. Question has been raised as to whether such exemptions for specified user groups constitute undue discrimination prohibited by Section 202(a) of the Act. We have initiated an investigation in Docket 19746 to consider this question and to determine, if such discrimination is found to exist, whether we ought to prescribe tariff changes which would be just and reasonable.

(Continued)

cost or operating expense, and the information specified below, and such records shall be available for inspection by the Commission.

(f) Each licensee sharing its facilities under this section shall file a notification with the Commission 30 days prior to the use of its facilities by any other person that has not been specified in its license application or in a prior notification to the Commission containing the following information:

(1) Name and description of the licensee;

(2) Call sign of the station or stations;

(3) The radio service in which the station is licensed;

(4) The names of all prospective participants in the cooperative use of the station and a description of each participant sufficient to show its eligibility to use the frequencies assigned to the station; and

(5) A copy of the contract between the parties for the cooperative use of the facilities.

(g) The licensee may institute the service described in the notification filed pursuant to paragraph (f) of this section 30 days after filing unless the Commission during that period notifies the licensee that the information supplied is inadequate or that the proposed service is not authorized under these regulations, and the licensee shall then have the right to amend or to file another notification to remedy the inadequacy or defect and to institute service 30 days thereafter, or at such earlier date as the Commission may set upon finding that the inadequacy or defect has been remedied.

(h) Each licensee sharing its facilities under this section on a nonprofit, cost-sharing basis shall file an annual report with the Commission, using FCC Form 402–A, within 90 days of the close of its fiscal year containing:

(1) A financial statement of operations during the preceding fiscal year in sufficient detail to show compliance with the requirements of this section;

(2) The names of those who have shared the use of the facilities during the preceding fiscal year;

(3) A brief statement as to the use of the facilities made by each person sharing the use and an estimate of the approximate percentage of use by each participant during the preceding fiscal year; and

(4) Any change in the items previously reported to the Commission concerning such facilities or there use in the application for the license or in a notification under this section.

(i) When radio facilities are shared under the provisions of this section without charge and without any other consideration from any other participants, or on a reciprocal basis, or when the facilities are shared solely by governmental entities, in lieu of the statements required to be filed by paragraph (h) of this section, the licensee shall file with the Commission within 90 days after the close of his fiscal year a statement advising the Commission of that fact.

(j) The licensee shall inform the Commission whenever the cooperative use of any of its facilities in accordance with this section is permanently discontinued.

23. In view of the close interrelationships between the single customer provisions and the tariff provisions governing resale, third party traffic and line sharing, we believe that the issues set for investigation in Docket 19746 should be considered in this proceeding in conjunction with the determination of our policy with regard to resale and sharing. Accordingly we are consolidating the issues under investigation in Docket 19746 with this proceeding.

24. We recognize that such a consolidation involves a procedural change as we set an oral hearing in Docket 19746 and in this proceeding are requesting participation in the form of written submissions. Considering the nature of the evidence to be adduced and the number of parties which can be expected to participate, however, we believe that the issues relating to the single customer provisions can be more expeditiously resolved through the submission of evidence in written form without prejudicing the rights of parties to participate in their resolution.

25. We expect to receive evidence that is "typical" of the groups that do and those that do not enjoy a single customer status. Data concerning groups that do enjoy single customer status must be weighed in light of comparable data relating to user groups that are not specified as single customers. Such descriptive type information is more conveniently received in written form rather than through oral proceedings. Also, a considerable number of parties representing a broad range of interests have intervened in Docket 19746. The oral process declines in effectiveness as the number of participants, and especially the number of diverse viewpoints to be presented, increases. Parties with limited resources, but with real interest in the issues, may find an extended oral proceeding to be a considerable financial burden. We expect to encourage more broadly based participation by requesting information in writing rather than requiring appearance at oral hearings. Further, we note that Western Union's tariff contains, verbatim, many of AT&T's single customer provisions as well as some not contained in AT&T's tariff. Yet presently Western Union is not a party respondent in that investigation and has not intervened. If issues with regard to single customer tariff provisions are to be finally resolved the Western Union tariff provisions should be included as an issue to be addressed along with those of AT&T. This addition then should bring additional participants to our investigation of single customer provisions which will further complicate the hearing proceeding. For these reasons, then, we believe that public participation in our investigation of the single customer tariff provisions will be expedited in a fully satisfactory manner by the submission of statements in written form and do not believe that parties will be prejudiced if such issues are considered in this proceeding. However, as we are providing with regard to all issues herein, we will set oral proceedings on specific issues should parties make a showing that they would be prejudiced unless oral proceedings are held.

IV. REGULATION OF SERVICE PROVIDERS

26. Entirely separate from issues relating to the availability of communications services and facilities for resale or shared use pur-

poses is consideration of the extent to which entities proposing to resell services or arrange line sharing should be regulated by this Commission. For example, we may find that it would be inappropriate to measure performance in terms of rate of return or investment to such entities. We may find that different application procedures and reporting procedures should be developed to allow for better Commission surveillance of particular segments of the communications industry affected by resale and shared use of facilities and services. We consider issues relating to the manner in which resale entities should be regulated to be as significant to the established carriers and the public as are the basic questions concerning the availability of facilities for resale or shared use purposes.

27. PCI, Graphnet, MDT and Telenet have all filed for Section 214 certification on condition that it is required. When determining the reach of our regulatory jurisdiction under Section 214 the principle question is whether or not a communications service for hire is being offered to the public and not on the operational characteristics of the provider. It is well settled that Section 214 authorization is required for the operation of, or transmission over or by means of, interstate lines derived from another carrier's plant.[19] We believe that it is clear, under the *MacKay* decision, that the proposals for computer-switched data communications networks which we have received do require Section 214 operating authority and are generally subject to regulation under the Communications Act.[20]

28. We do not at this time have sufficient information to determine if facsimile communications services and hybrid communications and processing services which are now operational or proposed are all subject to our regulatory jurisdiction. We note however that our jurisdiction is broad and extends to services the primary thrust of which is communications and also to services of non-communications nature provided by communications common carriers. We recognize however, as we did in our *Computer Inquiry*,[21] that the public interest may not require such full assertion of regulatory jurisdiction as is exercised over the established carriers which own and operate their own lines of communication. Therefore we believe the best approach to jurisdictional questions is to examine, without regard to the actual limits of our present jurisdiction, the extent to which this Commission ought to regulate the various forms of resale and sharing entities. At that point we can determine if we presently have sufficient legal authority to assert any regulatory jurisdiction we find to be desirable. To the extent that we find the public interest would be served by regulation that is not authorized by law, we can thereupon recommend any necessary legislative changes.[21a]

29. Western Union filed a petition on June 25, 1973 requesting that the Commission initiate a proceeding, analogous to the *Specialized Common Carrier Inquiry*, to examine, as a prerequisite to the consideration of any Section 214 application, the public need for services pro-

[19] *MacKay Radio and Telegraph Company*, 6 FCC 562 (1938).
[20] *See Computer Inquiry*, Tentative Decision, 28 F.C.C. 2d 291 (1970), para. 42.
[21] *Ibid*, paras. 18–23.
[21a] Pending the resolution of this proceeding we will, of course, require 214 applications of entities which propose services comparable to Packet, Graphnet and Telenet or which propose other services for which we have required 214 authorizations in the past.

vided in a resale manner and the competitive impact of such services on the established carriers (RM. 2218). Of the five issues specifically suggested by Western Union for inclusion in a rulemaking proceeding, three are of a general nature which we believe are implicitly within the scope of this proceeding and which must be considered as a prerequisite to establishing general policies with regard to the resale of common carrier services and facilities. These issues are:

1. Whether as a general policy the public interest would be served by permitting the entry of "value-added" or "pseudo carriers" to compete with the specialized and general purpose carriers.

2. Whether the further fragmentation of the industry which would result from establishment of resale-type services in competition with essential primary services now available from general purpose carriers is in the public interest.

3. Whether the proliferation of "value-added" carriers which will rely on facilities obtained primarily from Bell will promote or restrict competition.

30. Western Union also suggests that we include the following issues in a general rulemaking proceeding:

4. What would the impact of competition of the nature provided by "value-added" and "pseudo carriers" be on Western Union's ability to perform its common carrier obligations under the Communications Act.

5. Whether competition of the nature provided by the "value-added" and "pseudo carriers" with the prime services of Western Union is in the public interest.

These issues are more specifically directed to the impact of new services on Western Union's operations. In view of the diversity of new services being provided and which are proposed or can reasonably be expected, we believe that a blanket determination of their competitive impact on Western Union can not be made. We do not have the situation which led to our *Specialized Common Carrier Inquiry* where a multitude of applications were filed in the same time frame to provide the same markets with similar type services. Here we do not have Section 214 applications before us and so may not receive sufficient information with regard to specific services to determine if there will be adverse competitive impact on Western Union. However, we will not preclude Western Union and other interested parties from addressing the above issues in this proceeding. Having received the submissions of parties relevant to these issues we will consider whether such issues can be resolved in this proceeding or should only be considered in the context of specific applications for Section 214 authority along with other issues relative to the public interest, convenience and necessity for the particular service under consideration. We will not in the interim delay consideration of Section 214 applications as they are filed and Western Union has full opportunity to submit information in response to any such applications relative to competitive impact. Even assuming that we did believe at this time that the issues of competitive impact could be resolved in a general rulemaking proceeding, we do not believe that applications should be held up pending such resolution. An essential feature of many of the services which West-

ern Union would have us consider in a rulemaking proceeding is that they would extend to the public the advantages of state-of-the-art communications technology. In view of the fast pace of technological developments, prompt consideration of the public interest in such services is vital. In summary, then, the issues raised in RM. 2218 are to be considered in this proceeding.

V. ITEMS OF INQUIRY

31. We request that parties in this proceeding specifically address the following questions:

1. What is the justification for the restrictions on resale and third party traffic in the currently effective private line service of AT&T and Western Union?

2. Would the public interest be served by a removal of all restrictions on resale of private line services? What would the effect thereof be on:

a. AT&T and Western Union: Consider the impact on such factors as facilities fill and planning, traffic volumes, revenues, and rate of return for the company as a whole and by affected service or particular route.

b. The Communications Industry apart from AT&T and Western Union: How would removal of resale restrictions affect the viability of other carriers with their own lines of communication, the stimulation of research and development, the market for new equipment, the development of new carriers, the stimulation of the market for wire and radio communications?

c. Communications users: Discuss possible new services, new pricing structures, effect on cost of existing services, better communications management and stimulation of the use of the most efficient type of carrier for each type of service.

3. If a total removal of restrictions on resale is not desirable what specific restrictions are recommended? Fully justify any recommended restrictions and discuss in terms of the factors listed in question two.

4. Consider restrictions on resale of other services of AT&T, Western Union and other carriers in the same manner as called for by questions one, two and three above.

5. What is the justification for limiting the sharing of private line services to, generally, voice grade and under services and for requiring those desiring to effectuate a sharing arrangement to have a communications need of their own?

6. Would the public interest be better served by removing all restrictions on the sharing of private line facilities? If that would not be desirable, recommend necessary or desirable restrictions and justify any recommendations taking into consideration the effect of each on the carriers, other elements of the communications industry and the using public.

7. What is the public need for sharing of private line facilities? Discuss any new technologies being developed which would make sharing more attractive, new user applications of sharing and the relationship between the need for sharing and the availability of

facilities for resale. Specifically, what need for sharing would remain if all restrictions on the resale of private line facilities were eliminated?

8. What is the need for sharing of other services of AT&T and Western Union as well as the services of any other communications common carrier?

9. What is the justification for provisions of Section 2.2.1 of AT&T's Tariff F.C.C. No. 260 and Western Union's Tariff F.C.C. No. 254 which accord special tariff treatment to the airlines, corporate conglomerates, stock exchanges and their members, and others? Do such tariff provisions, constitute in whole or in part, unjust or unreasonable discrimination, or subject any person or class of persons to undue or unreasonable prejudice or disadvantage, or give any undue or unreasonable preference or advantage to any person or class of persons, within the meaning of Section 202 (a) of the Communications Act?

10. Should the provisions under consideration in question 9 be found to involve unlawful discriminations, what action should the Commission take to remove such unlawfulness? Fully justify any recommended tariff changes and discuss their consistency with any recommended changes with regard to resale and shared use of private line facilities in general.

11. Should the Commission regulate the sharing agreement made between customers and joint users and, if so, to what extent and in what manner? What reports should be required? Specifically consider possible guidelines governing the manner in which the cost of effectuating the sharing arrangement should be shared so that there is a clear distinction between sharing and resale?

12. How should the Commission regulate the entities reselling communications services and facilities? If in some instances full regulation would not be desirable recommend the manner and extent to which regulation is desirable. Specifically consider the most desirable manner of rate regulation for the various types of resale entities. For such entities would the setting of rates on the basis of operating ratios rather than rate base-rate of return be more effective? What accounting system and financial reporting should be required? What regulation over commencement of operation, standards of service and termination of service is desirable?

PROCEDURES

32. The primary objective of this proceeding is the acquisition of information which will enable the Commission to establish policies with regard to resale and shared use of common carrier facilities and services and to take action necessary to effectuate such policies. Consistent with judicial opinion that administrative agencies should tailor their proceedings to fit the issues to be considered and the circumstances under which decisions must be made [22], we are establishing a

[22] See, Permian Basin Area Rate Cases, 390 U.S. 747 (1968); see also City of Chicago v. FPC, 458 F. 2d 731 (1971) *cert. denied*, 405 U.S. 1074 (1972). We have taken the initiative in the past to establish special procedures in particular cases. See, Specialized Common Carrier Inquiry, 29 F.C.C. 2d 870 (1971); Domsat Inquiry, 2 F.C.C. 2d 86 (1970), 35 F.C.C. 2d 844 (1972); In the Matter of AT&T's High Density-Low Density Structure (procedural order), 45 F.C.C. 2d 88 (1974).

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procedure here to elicit the information we require in an efficient and expeditious manner.

33. The Administrative Procedure Act [23], which governs proceedings before administrative agencies, sets forth two basic procedures for use in agency rulemaking and adjudicatory proceedings. These may be viewed as providing the outer boundaries of administrative procedures [24]. The procedures of Sections 556 and 557 of that Act, which represent the highest degree of administrative protection that Congress believed would be necessary to protect interested parties, are not required for proceedings initiated under any of the sections of the Communications Act which authorize this proceeding.[25] While we believe that the procedures of Section 553, governing the so-called "notice and comment" rulemaking proceedings, are legally sufficient here to accomplish our purposes we are establishing a procedure containing elements of both Section 553 and Sections 556 and 557 proceedings to insure that a complete and accurate record is produced.

34. Since the heart of this proceeding is to establish broad policies, we believe that it is most appropriate to invite public participation through the submission of comment, information, criticism and recommendation in written form as is generally the case in Section 553 "notice and comment" rulemakings. In addition to the comments and reply comments customarily allowed in such rulemaking proceedings,[26] we will provide for a third round of submissions to allow those filing comments to respond to persons filing reply comments. Our decision will take into account and be limited to, materials submitted in this proceeding by interested persons or incorporated into the record of this proceeding by the Commission.[27] Finally, we will consider requests for further proceedings should interested persons believe that they are being prejudiced by the procedures established. Such requests should be specific as to the issue requiring further evidence and the reasons why prejudice will result if such further proceedings are not held.[28]

35. Parties should clearly indicate in their responses the questions addressed. Information on other relevant subjects may also be submitted as well as recommendations for additional issues which might well be addressed. In general, all studies should be in conformity to Section 1.363 of the Commission's rules (47 C.F.R. 1.363). Where allegations are made of financial harm to any carriers or any segment of the public, the studies underlying these allegations should be submitted. When no study has been done, because of unavailability of

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[23] Administrative Procedure Act, 5 U.S.C. § 551 ff.

[24] Mobile Oil Corp. v. FPC, 483 F. 2d 1238 (1973) and cases cited therein at footnotes 41–49.

[25] For Sections 556 and 557 procedures to be required the statutory hearing requirement must include the phrase "on the record" or words of similar import. United States v. Florida East Coast Railway Co., 410 U.S. 224 (1973); Phillips Petroleum Co. v. FPC, 475 F. 2d 842 (10th Cir. 1973) *cert. denied*, —— U.S. —— (January 14, 1974). For application of this judicial interpretation to sections of the Communications Act see the High Density-Low Density procedural order, *supra*, note 21, and In the Matter of Bell System Tariff Offerings of Local Distribution Facilities for Use by Other Common Carriers, Docket No. 19896, 46 F.C.C. 2d —— (April 23, 1974; FCC 74–457).

[26] See our Rules at 47 C.F.R. § 1.411 ff.

[27] In the event that materials not submitted by participants are incorporated into the record, notice and opportunity to comment thereon will be provided.

[28] We note that even where the APA Sections 556 and 557 procedures are required that evidence may be submitted in written form in rulemaking cases "when a party will not be prejudiced thereby". (5 U.S.C. 556(d).)

data or other reasons, an explanation of the difficulties should be appended, along with a complete discussion of the necessary study. Where loss of traffic or revenues, or an increase in cost is alleged, identify the specific services and routes in question. Revenue loss should be shown in dollar amounts and as a change in the rate of return (expressed as a percentage point change after adjusting for cost changes).

36. Accordingly, IT IS ORDERED, That pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 205, 208 and 403 of the Communications Act of 1934, as amended, there is hereby instituted an inquiry and proposed rulemaking into the foregoing matters. Members of the public are put on notice that any policies which may be established in this proceeding may be embodied in rules of the Commission.

37. IT IS FURTHER ORDERED, That Docket 19746 is TERMINATED and the issues set for investigation therein are to be considered in this inquiry.

38. IT IS FURTHER ORDERED, That the Petition for Inquiry and Rulemaking filed by Western Union (RM. 2218) is hereby GRANTED, to the extent described herein.

39. IT IS FURTHER ORDERED, That all interested persons may participate in accordance with procedures set forth above within the following time period. Comments are to be filed on or before September 9, 1974; reply comments are to be filed on or before October 24, 1974; responses to reply comments are to be filed on or before November 25, 1974. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. Should participants believe that further proceedings, including oral hearings are needed to develop a sufficient record for the resolution of particular issues, they should make appropriate requests as part of their final filing allowed by this paragraph. Such requests should be specific as to the issues to be considered, the nature of the proceedings required and the reason such proceedings are necessary.

40. IT IS FURTHER ORDERED, That the Commission will issue a First Report and Order and will designate therein issues to be investigated in oral hearings, if and to the extent such procedures appear necessary or appropriate. This is a restricted proceeding and any action taken by the Commission will be based on matters submitted for the record or incorporated into the record in this Docket.

41. In accordance with the provisions of Section 1.419 of the Rules, an original and 14 copies of all comments, replies, pleadings, briefs and other documents shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-690

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMERICAN TELEPHONE & TELEGRAPH CO., ET AL. Offer of Facilities for Use by Other Common Carriers	Docket No. 20099

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 5, 1974)

BY THE COMMISSION:

1. By Memorandum Opinion, Order and Authorization released September 12, 1973 (42 F.C.C. 2d 654), we granted the application of American Telephone and Telegraph Company (AT&T) to construct and operate a domestic satellite communications system. However, the effectiveness of this Order was conditioned upon AT&T's written acceptance of certain "conditions and understandings" with respect to the provision of interconnection facilities. One of the primary conditions was that AT&T and associated Bell System companies file tariff schedules related to interconnection facilities in accordance with Section 203 of the Act [1] and Part 61 of the Rules.

2. On October 4, 1973, we adopted an order in letter form in which we rejected AT&T's contention that the Bell System companies were in compliance with the Communications Act and our decisions by filing tariffs with the state regulatory agencies for interconnection facilities furnished to specialized communications carriers licensed by us for interstate services. We further stated our view that our policy objectives and the Communications Act require that Bell file its tariff schedules with this Commission.

3. In purported compliance with these Orders of September 12, 1973 and October 4, 1973, the Bell System companies, on November 12, 1973, filed tariffs with us offering two types of access facilities to Domestic Satellite carriers: *entrance* facilities to be furnished under AT&T Tariff F.C.C. No. 265 and Pacific Telephone and Telegraph Company (PT&T) Tariff F.C.C. No. 123 and *intercity* interexchange channel facilities to be furnished under AT&T Tariff No. 266 and PT&T Tariff F.C.C. No. 124; and 14 Associated Bell System companies filed separate tariffs with us offering to provide *local distribution* facilities not only to Domestic Satellite carriers but to other carriers as well. All of the aforementioned tariffs were identified in our Public Notice of November 19, 1973. These tariffs were filed under

[1] The Communications Act of 1934, as amended, 47 U.S.C. § 203.

protest and were accompanied by claims of the Bell System that we have no jurisdiction over the subject matter of the tariffs.

4. On or before December 19, 1973 petitions to suspend and investigate the tariffs were submitted by: MCI Telecommunications Corporation, Microwave Communications, Inc., MCI New York West, Inc., Interdata Communications, Inc., and MCI St. Louis-Texas, Inc. (collectively MCI); The Western Union Telegraph Company (WU); the American Satellite Corporation (ASC); Data Transmission Company (Datran) and Southern Pacific Communications Company (SPCC). RCA Global Communications filed a letter of concern as to several tariff provisions on December 18, 1973. The petitions asked us to suspend the effectiveness of these tariffs and to set them for hearing on the questions of lawfulness raised by the petitioners. In separate pleadings, MCI, WU, ASC, and CML Satellite Corporation asked us to reject the tariffs in question without further proceedings. The Bell System submitted its reply pleadings on January 3, 1974 in which it opposed all petitions to suspend or to reject.

5. By Memorandum Opinion and Order,[2] we denied the petitions to the extent that they requested suspension or rejection at that time. Thus our action allowed all of the tariffs to become effective, as published, on January 11, 1974, except for the New York Telephone Company tariff (F.C.C. No. 37) which was published to become effective February 24, 1974. Subsequent to our January 11, 1974 Order, we received further petitions to suspend and reject New York Telephone Company's Tariff F.C.C. No. 37, filed by ITT World Communications Inc. and Western Union International, Inc. By Memorandum Opinion and Order [3] we denied these new petitions to the extent that they again requested suspension or rejection at that time. In both of these orders, we stated that we would defer further action on the tariff filings until further proceedings in Docket No. 19896, and that to the extent the questions raised by the petitions are not encompassed in the issues to be resolved in Docket No. 19896, a separate investigation and hearing would be instituted in due course.

6. On April 23, 1974, we released our Decision in Docket No. 19896.[4] We there concluded that:

> Bell engaged in conduct which has resulted in the denial of, or unreasonable delay in establishing, physical connections with MCI and other specialized common carriers which are parties to this proceeding; that it pursued policies and practices which foreclosed the establishment of through routes, and the charges, facilities and regulations applicable thereto in connection with authorized interstate services of MCI and other specialized carriers; that Bell is unlawfully applying and proposes to continue to apply the tariff schedules of charges and regulations filed with state regulatory commissions for services and facilities provided to MCI and other specialized common carriers and used by the specialized carriers in the transmission of interstate and foreign communications; and that Bell has discriminated against MCI and other specialized carriers in favor of

[2] *Bell System Tariffs re Entrance, Intercity and Local Distribution Facilities*, FCC 74–36 (released January 11, 1974), *appeal docketed sub nom., The Western Union Telegraph Company* v. *FCC*, No. 74–1317 D.C. Cir.

[3] *New York Telephone Company Tariff F.C.C. No. 37*, 45 F.C.C. 2d 365 (1974), *recon. denied*, 46 F.C.C. 2d 132 (1974), *appeal docketed sub nom., ITT World Communications, Inc.* v. *FCC*, No. 74–1721 2nd Cir.

[4] *Bell System Tariff Offerings of Local Distribution Facilities*, FCC 74–457 (released April 23, 1974), *appeal docketed sub nom., Bell Telephone Company of Pennsylvania* v. *FCC*, No. 74–1386 3rd Cir.

its own Long Lines Department by denying to MCI and other specialized carriers the interconnection privileges presently provided to the said Long Lines Department in connection with authorized interstate services. We further conclude that the aforementioned conduct and practices are in violation of the Act, and the declared policy of the Commission; and that the public interest requires the issuance of orders requiring Bell to cease and desist from further violations.[5]

We ordered AT&T and the Bell System companies to:

Furnish to MCI Telecommunications Corporation, MCI New York West, Inc. and other specialized common carriers the interconnection facilities essential to the rendition of all of their presently or hereafter authorized interstate and foreign communications services and to enable the said specialized common carriers to terminate their authorized interstate and foreign communications services, including interconnection by the specialized carriers into a telephone company's local exchange facilities for the purpose of furnishing Foreign Exchange (FX) service or for insertion into telephone company Common Control Switching Arrangements (CCSA);

* * * * * * *

and file with the Commission pursuant to Section 203 of the Act and Part 61 of the Commission's Rules, tariff schedules to cover interconnection facilities for all of the authorized interstate and foreign communications services of the specialized common carriers.[6]

In purported compliance with the Decision, Bell filed, on May 3, 1974, two new tariffs—Bell Operating Companies F.C.C. Tariffs No. 1 and No. 2—and supplements and revisions to all its earlier filed tariffs offering facilities to other common carriers.

7. We are now prepared to institute a formal investigation and hearing on the substantive provisions of all the Bell System's tariffs offering entrance, intercity and local distribution facilities for other carriers, as well as the Bell-Western Union exchange of facilities contracts. In this proceeding, we are most concerned with those tariff provisions which impose restrictions on the use of the facilities. We also wish to examine, among other things, the different rate levels and rate structures found in the various local distribution tariffs and contracts. In our investigation of all of the Bell entrance, intercity and local distribution tariffs,[7] we will be particularly concerned with any charges, practices, classifications and regulations which may operate to deny to non-Bell carriers the interconnection privileges presently provided to AT&T's Long Lines Department. We will also inquire into whether Bell's May 3, 1974 filings are in accordance with the terms and conditions of our April 23, 1974 Decision, and the Commission's Rules.

8. In our January 11, 1974 Memorandum Opinion and Order,[8] we pointed out that Section 61.38 of our Rules was waived insofar as that section required the filing of supporting data at the time of filing the tariffs, and that the grant was without prejudice to the Commission's requiring such data and information to be submitted in the future in connection with any investigation of such tariffs.

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[5] *Ibid.* at para. 45.
[6] *Ibid.* at para. 53.
[7] Since the initial tariff filings, five more local distribution tariffs were filed on March 15, 1974 and became effective April 15, 1974. These tariffs, covering the states of Michigan, Georgia, Texas, Oklahoma and Kansas, are listed, along with the earlier filed tariffs, in the Appendix hereto.
[8] *Bell System Tariffs, supra,* note 2.

Because the instant Order designates these tariffs for investigation, we will order Bell to supply the Section 61.38 supporting data within 30 days. This should not be an unduly short period of time, since absent our waiver, this information would have been required to be filed along with the tariffs on November 12, 1973. Furthermore, Bell has been on notice since our January 11, 1974 Order that we would be requiring the submission of this material in connection with any investigation of the tariffs.

9. We take note of a Petition filed on October 15, 1970 by James M. and Mariam G. Carpenter d/b/a Carpenter Radio, pursuant to Sections 201(a), 201(b), and 202(a) of the Communications Act of 1934, as amended, alleging that the United Telephone Company of Ohio (United) and the Ohio Bell Telephone Company (Ohio Bell) have refused lines to Carpenter Radio as a common carrier at contract prices lower than the tariff rate and at a level applied to other similarly situated carriers. The nature of Carpenter's Petition is such that we will consider it a petition for interconnection filed pursuant to Section 201(a) of the Communications Act of 1934, as amended. United and Ohio Bell have filed answers to the Petition and Motions to Dismiss, and various other pleadings have been filed by both the telephone companies and Carpenter. Basically Carpenter is requesting wires to interconnect a satellite receiver to its control point at Lima, Ohio. The requested interconnection would utilize the facilities of both United and Ohio Bell. It appears that the interconnection Carpenter requests may be included or should be included within the provisions of Ohio Bell's Local Distribution tariff. Accordingly, the Motions to Dismiss will be denied and Carpenter's Petition and the matters raised therein as to the question of the reasonableness and lawfulness of Defendant's actions concerning the provision of the necesary facilities for operation of Carpenter's satellite receiver shall be explored in this proceeding. United will also be named a party in this proceeding since it may be required to provide a portion of the facilities to accomplish an appropriate interconnection.

10. The Commission also has before it a Petition for Reconsideration of its April 2, 1974 Memorandum Opinion and Order in *New York Telephone Company Tariff F.C.C. No. 37*, 46 F.C.C. 2d 132, filed by RCA Global Communications, Inc. (RCA Globcom) on May 2, 1974. RCA Globcom submits that in view of the Commission's Decision in Docket No. 19896,[9] the Commission must rule that the contracts between the international carriers and New York Telephone Company are still effective and have not been superseded by its Tariff F.C.C. No. 37. The Commission has twice before considered and rejected RCA Globcom's arguments[10] and as we have stated before, "we would need additional information as to these arrangements before undertaking to take remedial action."[11] RCA Globcom has not provided any additional information which would assist the Commission in resolving this question, and its petition will there-

[9] *Bell System Tariff Offerings, supra*, note 4.
[10] *New York Telephone Company Tariff F.C.C. No. 37, supra*, note 3.
[11] *Bell System Tariff Offerings, supra*, note 4, at para. 51.

fore be denied. However, we will consider herein the question of whether New York Telephone Company should provide facilities to the international record carriers pursuant to contract or pursuant to tariff (see issue number six, *infra*).

11. In view of the nature of the issues to be decided in this proceeding, we are adopting procedures designed to elicit the information we require in an efficient and expeditious manner. Rather than an oral trial-type hearing, we will provide for three rounds of submissions—comments, responses, and replies—which will form the record. Our decision will take into account, and be limited to, materials submitted herein for the record or incorporated into the record of this proceeding by the Commission.[12] Since the issues are very narrowly drawn, if the parties thoroughly address each issue in their written comments, the Commission expects to be able to reach a determination on most if not all of the specified issues. We will consider requests for further proceedings should interested persons believe they are being prejudiced by the procedures established.

12. Accordingly, IT IS ORDERED, That, pursuant to the provisions of Sections 4(i), 201–205, 211, and 403 of the Communications Act, as amended, an investigation and hearing is hereby instituted into the lawfulness of the above-mentioned AT&T-Western Union exchange of facilities contracts and the tariffs listed in the Appendix attached hereto, as well as any revisions thereto.

13. IT IS FURTHER ORDERED, That the specific issues to be considered in this proceeding shall include, but not be limited to:[13]

Tariff Construction and Application

1. Whether there is any justification for filing two entrance facilities tariffs rather than one;

2. Whether there is any justification for filing three intercity facilities tariffs rather than one;

3. Whether there is any justification for filing twenty-five separate local distribution facilities tariffs rather than one;

4. Whether the entrance, intercity and local distribution facilities tariffs should be combined into one tariff or general application offering communications facilities to other common carriers;

5a. Whether Ohio Bell's Local Distribution tariff applies to the service Carpenter requests, and if not, whether Ohio Bell should be required to file revised tariffs with this Commission for the provision of such service;

b. Whether United should be required to file tariffs with this Commission for provision of the service Carpenter requests;

6. Whether, in view of the terms of any contracts (oral or otherwise) which may be found to exist concerning the provision

[12] In the event materials not submitted by participants are incorporated into the record, notice and opportunity to comment will be provided.

[13] The Commission is in receipt of a letter dated June 25, 1974 from AT&T, in which AT&T states its intention to restructure the facility tariffs of AT&T and the Bell System Operating Companies and to make numerous substantive changes, on August 1, 1974 to become effective on August 2, 1974. This letter, which describes in detail all the changes contemplated, will be served by the Commission on all persons filing a notice of intention to participate pursuant to paragraph 17. All participants are requested to address their comments, not only to the listed issues, but also to the AT&T proposals, as well as any other relevant matters.

of facilities to the international record carriers by New York Telephone Company, the Commission should require that such facilities be furnished pursuant to such informal contracts rather than pursuant to filed tariffs;

7. Whether the tariffs and tariff revisions filed by Bell on May 3, 1974 comply with Part 61 of the Commission's Rules and with the terms and conditions of the Commission's April 23, 1974 Decision in *Bell System Tariff Offerings of Local Distribution Facilities* (FCC 74-457); [14]

Rates and Charges

8. Whether there is any justification for different rate levels and pricing structures in different states;

9. Whether there is any justification for any limitation of liability due to Bell's negligence;

10. Whether there is any justification for credits for interruption of service on entrance facilities being allowed only if the interruption lasts two hours or more;

11. Whether there is any justification for credits for interruption of local distribution service being allowed only if the interruption lasts at least 24 hours;

12. Whether there is any justification for placing either a dollar or percentage limit on the amount of facilities that can be cancelled in any one month;

13. Whether there is any justification for establishing a tariff rate different from that in the Western Union contracts;

14. Whether there is any justification for charging twice as much for an effective four-wire facility as for a two-wire facility;

Restrictions on Use of Facilities

15. Whether there is any justification for providing that facilities may be denied upon objection "made by or on behalf of any governmental authority";

16. Whether there is any justification for prohibiting the use of facilities for administrative purposes;

17. Whether there is any justification for not providing facilities into abutting and nearby exchange areas as a general proposition;

18. Whether there is any justification for requiring Bell's carrier customers to file tariff provisions setting forth Bell's minimum protective criteria;

19. Whether there is any justification for restricting to one the number of cities, or local distribution areas, which can be served by means of a single earth station;

20. Whether there is any justification for restricting the terminal locations which will be served;

21. Whether there is any justification for prohibiting the use of local distribution facilities for transiting a local distribution area;

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[14] Inclusion of this issue is without prejudice to the Commission's right to reject, in whole or in part, any of the tariffs under investigation herein, prior to the issuance of the First Report and Order.

22. Whether there is any justification for providing only voice-grade facilities;

23. Whether there is any justification for prohibiting transmission in the digital mode above 75 baud;

24. Whether there is any justification for the prohibition against using ground as a return path for a digital signal;

25. Whether there is any justification for providing intercity facilities to a domestic satellite common carrier only if that carrier maintains a "central office" in the city to be served;

26. Whether there is any justification for limiting the provision of entrance facilities to supergroup bandwidth and above; and

27. Whether there is any justification for providing that facilities may be refused merely by reasons of any indebtedness to Bell.

14. IT IS FURTHER ORDERED, That, without any way limiting the scope of the proceeding, it shall include consideration of the following legal issues:

1. Whether any of the charges, classifications, regulations, and practices contained in the tariffs or contracts are or will be unjust or unreasonable within the meaning of Section 201(b) of the Communications Act;

2. Whether such tariffs or contracts will make an unjust or unreasonable discrimination or will subject any person or class of persons to undue or unreasonable prejudice or disadvantage, or will give any undue or unreasonable preference or advantage to any person or class of persons, within the meaning of Section 202 (a) of the Communications Act;

3. Whether the Commission should prescribe just and reasonable charges, classifications, regulations, and practices to be hereafter followed with respect to the service governed by such tariffs and contracts and, if so, the charges, classifications, regulations, and practices that should be prescribed.

15. IT IS FURTHER ORDERED, That AT&T and the Bell System Companies are hereby named PARTIES RESPONDENT herein; and the United Telephone Company of Ohio is hereby named PARTY RESPONDENT herein for the limited purpose and to the extent necessary to respond to issue 5.b. above.

16. IT IS FURTHER ORDERED, That a trial staff of the Common Carrier Bureau shall participate and be separated both from the Commission and from the Administrative Law Judge. (See In re AT&T, Docket 18128, 32 FCC 2d 89, 90 (1971))

17. IT IS FURTHER ORDERED, That any interested persons intending to participate herein shall, within 10 days of the release of this order, file a notice of intention to participate. The Commission will then issue a Public Notice, stating the names of parties intending to participate herein. All comments, responses, replies, pleadings and other submissions shall be served on the parties listed in the Public Notice.

18. IT IS FURTHER ORDERED, That any interested persons may participate herein by filing comments, responses, and replies in accordance with the following schedule. Comments are to be filed within 30 days of the release of this order; responses are to be filed

within 30 days of the filing of comments; and replies are to be filed within 15 days of the filing of responses. Should participants believe that further proceedings, including oral hearings are needed to develop a sufficient record for the resolution of particular issues, they should make appropriate requests as part of their *final* filing allowed by this paragraph. Such requests should be specific as to the the issues to be considered, the nature of the proceedings required and the reasons why prejudice will result if such further proceedings are not held.

19. IT IS FURTHER ORDERED, That the Commission will issue a First Report and Order and will designate therein issues to be investigated in oral hearings, if and to the extent such procedures appear necessary or appropriate. This is a restricted rule-making proceeding and any action taken by the Commission will be based on matters submitted for or incorporated into the record in this Docket.

20. IT IS FURTHER ORDERED, That an original and 14 copies of all comments, responses, replies, pleadings and other documents filed herein shall be furnished the Commission.

21. IT IS FURTHER ORDERED, That the Petition filed by Carpenter is GRANTED to the extent indicated above and is otherwise DENIED; and that the motions to dismiss filed by Ohio Bell and United are DENIED.

22. IT IS FURTHER ORDERED, That the Petition for Reconsideration filed May 2, 1974 by RCA Globcom is DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

TARIFFS UNDER INVESTIGATION

State	Carrier	Tariff No.
Entrance facilities:		
	A.T. & T.	265
	P.T. & T.	123
Intercity facilities:		
	A.T.& T.	266
	P.T. & T.	124
	Bell operating cos.	2
Local distribution facilities:		
Arizona	Mountain Bell	50
California	P.T. & T.	122
Colorado	Mountain Bell	51
District of Columbia	C. & P. Telephone Co.	32
Georgia	Southern Bell	53
Illinois	Illinois Bell	36
Iowa	Northwestern Bell	41
Indiana	Indiana Bell	31
Kansas	Southwestern Bell	63
Maryland	C. & P. of Maryland	34
Michigan	Michigan Bell	35
Minnesota	Northwestern Bell	43
Missouri	Southwestern Bell	59
Nebraska	Northwestern Bell	42
New Jersey	New Jersey Bell	31
New York	New York Telephone Co.	37
North Dakota	Northwestern Bell	40
Ohio	Ohio Bell	35
Oklahoma	Southwestern Bell	62
Pennsylvania	Bell of Pennsylvania	36
Texas	Southwestern Bell	61
Utah	Mountain Bell	56
Virginia	C. & P. of Virginia	36
Wisconsin	Wisconsin Telephone Co.	33
All other States	Bell operating cos.	1

FCC 74-655

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matters of BELL SYSTEM TARIFF OFFERINGS OF LOCAL DISTRIBUTION FACILITIES FOR USE BY OTHER COMMON CARRIERS; AND LETTER OF CHIEF, COMMON CARRIER BUREAU, DATED OCTOBER 19, 1973, TO LAURENCE E. HARRIS, VICE PRESIDENT, MCI TELECOMMUNICATIONS CORP.	Docket No. 19896

MEMORANDUM OPINION AND ORDER

(Adopted June 25, 1974; Released July 5, 1974)

BY THE COMMISSION:

1. In a Decision, FCC 74-457, released April 23, 1974, in this proceeding, the Commission rejected certain tariffs filed by American Telephone and Telegraph Company (Bell), insofar as the tariffs included interconnection facilities and services covered by written exchange of facilities contracts with The Western Union Telegraph Company.[1] Western Union International (WUI) and other International Record Carriers (IRCs) argued that like action should be taken with respect to facilities and services received by them from Bell pursuant to alleged unwritten contracts, custom, and informal arrangements. Finding, however, that it lacked sufficient information concerning those contracts or arrangements to support remedial action, the Commission refused to reject the tariffs insofar as they related to facilities and services provided to WUI and other IRCs. Now before the Commission is a petition for reconsideration filed May 23, 1974, by WUI, in which it renews its request that the Bell tariffs be rejected to the extent that they cover facilities and services included in the alleged agreements or arrangements with Bell. Also under consideration are oppositions to WUI's petition filed May 29, 1974, by the Chief, Common Carrier Bureau, and June 5, 1974, by Bell. WUI filed a reply to the oppositions on June 21, 1974.

2. WUI has not presented any new factors warranting reconsideration. The Commission still needs additional information concerning the alleged contracts, terms of service, and the prerequisites for altering any existing arrangements before undertaking remedial action. In our Decision we noted that if the IRCs could not resolve their differences with Bell, we would consider their contentions in a separate proceeding where a determination may be based on a full showing

[1] Under their terms, the Bell-Western Union contracts could be terminated only upon 5 years' notice.

of all the relevant facts concerning the arrangements between Bell and the IRCs. We see no reason to change that determination.

3. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed May 23, 1974, by Western Union International, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-667

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF THE COMMISSION'S RULES AND REGULATIONS RELATIVE TO CABLE TELEVISION CHANNEL IDENTIFICATION	Docket No. 19334

FURTHER NOTICE OF PROPOSED RULEMAKING

(Adopted June 25, 1974; Released July 2, 1974)

BY THE COMMISSION:

1. Notice is hereby given of further proposed rulemaking in the above-entitled matter.

2. On October 26, 1971, the Commission, on its own motion, released a *Notice of Proposed Rule Making in Docket No. 19334*.[1] By this notice, interested parties were invited to file comments on a proposed new rule, Section 74.1123,[2] which would require cable operators to identify their originated programs as the product of the cable system. The proposed Section 74.1123 read as follows:

> Section 74.1123 Cable Television Channel Identification
>
> (a) *Content.* Programs originated on cable systems shall be clearly identified as the product of the cablecaster, by name, and use of the expression, "Cable TV Channel ____, (Location)."
>
> (b) *Frequency.* The cablecaster shall make appropriate identification announcements at the beginning and end of each cablecast program. The announcement shall be by both aural and visual means.

3. Our concern was prompted by complaints from cable television viewers that the use of four-letter call signs to identify origination channels engendered confusion among viewers as to whether they were watching broadcast programs or cable programs. We also noted that a system of identification by cablecasters would be useful in identifying the source of interference caused by signal leakage. In response, ten comments totaling in all, 37 pages, were received. No reply comments were filed.

4. In the interim following the release of the initial *Notice of Proposed Rule Making* in this proceeding, significant developments have occurred which render the proposed rule inadequate. Foremost among these was the adoption of the *Cable Television Report and Order*,[3] which established a comprehensive new program for the initiation and development of access channels and facilities. These specially-desig-

[1] FCC 71-1084, adopted October 21, 1971.

[2] This rule was proposed as 74.1123. This section number was subsequently assigned to a different subject. In the meantime, Part 76 was adopted to cover all rules in the Cable Television Service. Hence, the rule proposed herein, when finally adopted, will carry a Part 76 number instead of a Part 74 number.

[3] 36 FCC 143 (1972).

nated public, educational, local government, and leased-access channels carry diverse programming deriving, not from the cable operator, but from many different sources. As the National Cable Television Association, Southwest Video, Inc., and Community Telecommunications, Inc., perceived in their comments, the advent of access has augmented the need for identification to encompass not only cablecasting channels but also the source of cablecast programs. A concomitant development has been the continued increase in the cost of local originations.[4] To this extent, we recognize the validity of the observations of Triangle Broadcasting Corporation, Southwest Video, Inc., and Cablevision of Fredericksburg, Inc., that to require both audio and visual identification may prove excessively burdensome both technologically and economically. Of course, we recognize and support the efforts of those operators who are engaged in local originations; we would not wish our proposed rule to impose a handicap which might discourage the continuation of local origination where it exists. Finally, we also note the comment filed by the National Weather Service in which it is remarked that, as weather and other types of programs are developed for syndication to origination channels, source-identification may be difficult on a channel or system basis if the programming is available on a continuous and automatic basis from an outside source. In sum, we are persuaded that new circumstances require a re-examination of the proposal that cable origination programs, as well as channels, be identified.

5. In view of the foregoing, the Commission invites all interested parties to submit comments on or related to the following questions:

(1) Should the text of the rule proposed in the initial *Notice of Proposed Rule Making* in this proceeding be amended, eliminated, or altered in any way?

(2) Could the intended purpose of the proposed rule be better achieved by a simple rule of general application requiring that all cablecast programming be identified in any available manner so long as the source of the programming was disclosed and the identification assured that it was not confused with broadcast programming?

(3) Should access channels and/or programming be required to be identified?

(4) If access programming were required to be identified, how should this identification be made? Visually? Aurally? Visually and aurally? Should the mode of identification be optional?

(5) When should access channel identification be made?

(6) Should the originator of each program presented on an access channel be required to be identified? When and how should this identification be made?

(7) Should any specific form of identification be prescribed, or should the form be optional?

(8) Should any form of identification be specifically prohibited?

[4] "The Users of Cable Communication" (Cable Television Information Center, 1973). *See generally, Notice of Proposed Rule Making and of Inquiry in Docket No. 19988*, FCC 74–315, adopted March 28, 1974.

6. Authority for the rule making proposed herein is contained in Sections 4(i), 303 and 403 of the Communications Act of 1934, as amended. All interested parties are invited to file written comments on or before August 9, 1974, and reply comments on or before August 27, 1974. In reaching a decision on this matter, the Commission may take into account any other relevant information before it, in addition to the comments invited by this Notice.

7. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 14 copies of all comments, replies, pleadings, briefs, or other documents filed in this proceeding shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission Public Reference Room at its Headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-668

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CLEAR VIEW CABLE TV, INC., SUTHERLIN, OREGON For Certificate of Compliance	CAC-2862 OR180 CSR-522

MEMORANDUM OPINION AND ORDER

(Adopted June 25, 1974; Released July 8, 1974)

BY THE COMMISSION:

1. Clear View Cable TV, Inc., has been certified by the Commission to operate a cable television system at Sutherlin, Oregon. The system is located within the Roseburg, Oregon, smaller television market and is authorized to serve subscribers with the following television broadcast signals:[1]

KPIC (NBC, Channel 4) Roseburg, Oregon
KOBI (ABC/CBS, Channel 5) Medford, Oregon
KEZI-TV (ABC, Channel 9) Eugene, Oregon
KVAL-TV (NBC, Channel 13) Eugene, Oregon
KOIN-TV (CBS, Channel 6) Portland, Oregon
KPTV (Ind., Channel 12) Portland, Oregon
KOAC-TV (Educ., Channel 7) Corvallis, Oregon
KMED-TV (NBC/ABC, Channel 10) Medford, Oregon
KSYS (CP-Educ., Channel 8) Medford, Oregon

On July 30, 1973, Clear View filed an application for certificate of compliance and petition for special relief, seeking authorization to carry Station KVDO-TV (Ind., Channel 3), Salem, Oregon.[2] An opposition to the application has been filed by South West Oregon Television Broadcasting Corporation, licensee of Television Broadcast Station KPIC, Roseburg, Oregon, and a statement in support of the application has been filed by Corvallis TV Cable Company, licensee of Station KVDO-TV, Salem, Oregon. A letter from Mr. Donald S. Kelley, City Attorney for the City of Sutherlin, has also been filed.

2. In its opposition, KPIC argues that since the community of Sutherlin is within the specified zone of Roseburg, Oregon, a smaller

[1] Clear View was granted a certificate of compliance (CAC-2456) by the Chief, Cable Television Bureau, pursuant to delegated authority, on March 26, 1974. When energized, the cable system will have 20 channels available for carriage of broadcast and access services, of which nine will be used for television signal carriage, one for automated program originations, and one to deliver AM or FM broadcasts.

[2] Subsequently, on March 29, 1974, Clear View filed a "Petition for Waiver of Section 76.91" requesting that the network program exclusivity rules be waived until 500 subscribers are enlisted. On March 28, 1974, in *Report and Order in Docket No. 18785*, FCC 74-299, 46 FCC 2d 94, the Commission amended Section 76.95 of the Rules to exempt from Section 76.91 cable systems having fewer than 500 subscribers. Accordingly, we will dismiss the petition as moot.

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television market, Section 76.59(b) of the Rules permits Clear View to import only one distant independent signal, and Clear View is already certified to carry Station KPTV (Ind., Channel 12), Portland, Oregon. KPIC submits that Clear View has offered no justification for waiver of Section 76.59(b).

3. In support of its petition for special relief, Clear View states that the Commission's restriction of one independent signal for smaller television markets was designed (a) to maintain conditions for the establishment of additional stations, (b) to stimulate origination cablecasting and (c) to prevent loss or deterioration of local service by the presence of many competing signals. Clear View asserts that these goals will not be frustrated by Clear View's importing an additional independent (a) since the only television channel allocated to Roseburg is already occupied by KPIC, and the establishment of additional stations is therefore impossible, (b) since the community of Sutherlin has a population of only 3,058, and the cable system would be unable to bear the cost of program origination regardless of the number of independent stations being carried, and (c) since KPIC is in fact a low power satellite of Station KVAL–TV, Eugene, Oregon, "is economically in good hands," and "after 17 years of operation, there appears to be little chance of the station graduating from satellite status."

4. In its statement of support for Clear View's argument, KVDO–TV states that because it is the state capital's only television station, it provides the state's most comprehensive coverage of state government news. In support of this contention, it has provided a listing of programs of Oregon public interest that it carries. KVDO–TV further submits that KPIC has offered no claim of injury should the KVDO–TV signal be imported and states that since KPIC is a satellite, the net effect of the Rules is to provide the parent, KVAL–TV, with a 55-mile specified zone. Moreover, KVDO–TV states, the possibility of economic injury is further reduced by the fact that both KPIC and KVAL–TV will be carried on the cable system and that, in any case, "[a]s between a small neophyte cable system and the successful satellite of a large city station, the equities should weigh in favor of the cable system."

5. A letter from Mr. Donald S. Kelley, City Attorney for Sutherlin, has been filed stating "that the City of Sutherlin supports the application for certification and requests for special relief. . . ."

6. Clear View's application must be denied. We adopted the cable rules with full understanding that certain television markets have attained their market ranking because of the inclusion of one or more satellite stations. It was our intention to treat all similarly situated television broadcast stations equally, regardless of whether they are satellites, on the theory that satellite stations may eventually expand their local programming and leave satellite status. *Midwest Video Corp.*, FCC 73–377, 40 FCC 2d 441 (1973). The fact that KPIC has not done so to this point does not preclude its doing so in the future. Nor has Clear View submitted any evidence to persuade us that the size of Sutherlin's population precludes origination cablecasting by the system.[3] Since the importation of Station KPTV provides Clear

[3] In its petition, Clear View cites the population of Sutherlin as 3,058, but in its FCC Form 325, the figure given is "4,000 approx."

View with the full service complement contemplated by the Rules, and since the cable system has failed to make the requisite substantial showing to warrant a deviation therefrom, the application for certificate of compliance and petition for special relief to carry Station KVDO–TV will be denied. *See Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 187 (1972).

In view of the foregoing, the Commission finds that a grant of the above-captioned application would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Application for Certification and Request for Special Relief" (CAC–2862), filed on July 30, 1973, by Clear View Cable TV, Inc., IS DENIED.

IT IS FURTHER ORDERED, That the "Petition for Waiver of Section 76.91" (CSR–522), IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-707

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF SUBPART P, PART 89 OF THE COMMISSION'S RULES (ELIGIBILITY OF COMPREHENSIVE HEALTH SERVICES)	Docket 19576 RM-2017
AMENDMENT OF PARTS 2 AND 89 OF THE COMMISSION'S RULES TO ALLOCATE 157.450 MHz TO THE SPECIAL EMERGENCY RADIO SERVICE FOR MEDICAL PAGING SYSTEMS IN HOSPITALS	Docket 19643
AMENDMENT OF PARTS 2 AND 89 OF THE COMMISSION'S RULES AND REGULATIONS RELATING TO COMMUNICATIONS FOR EMERGENCY MEDICAL SERVICES	Docket 19880

REPORT AND ORDER

(Proceedings Terminated)

(Adopted July 2, 1974; Released July 16, 1974)

BY THE COMMISSION:

1. The Commission has under consideration its Notice of Inquiry and Proposed Rule Making in Docket 19880, adopted November 28, 1973, and published in the Federal Register December 6, 1973 (38 FR 33617). The Notice invited comments on proposals by the Office of Telecommunications Policy (OTP), developed from a report of the Interdepartment Radio Advisory Committee (IRAC), relating to establishment of an Emergency Medical Radio Service under Part 89 of the Commission's Rules. The Notice also solicited public views on recommendations contained in the contract study report prepared for the Commission by Advanced Technology Systems (ATS) concerning radio communications requirements for emergency medical services (EMS). As a result of these comments, the Commission stated that final rules could be adopted.

2. Matters under consideration in Docket 19880 also directly relate to proposals contained in two other rule making actions, Dockets 19576 and 19643. Accordingly, these proceedings are being consolidated for disposition in this action. In Docket 19576, we adopted a Notice of Proposed Rule Making on August 29, 1972, to provide eligibility for comprehensive health services in the Special Emergency Radio Service (SERS). This Notice was published in the Federal Register on September 13, 1972 (37 FR 18570). In Docket 19643, a Notice was released on November 29, 1972, to allocate the frequency 157.450 MHz to the Special Emergency Radio Service for medical paging systems in

hospitals. This Notice was published in the Federal Register on December 1, 1972 (37 FR 25546).

BACKGROUND

3. The basic proceeding in Docket 19880 was initiated in recognition of the need for an up-dated licensing and regulatory structure to accommodate the nation's rapidly changing and expanding requirements for medical radio communications. Many factors have lent impetus to our effort. For one, there is an increased awareness and response on the part of the medical community to the potential of radio for the more effective treatment of patients. An example is the use of biomedical radio telemetry techniques to transmit electrocardiograms to hospital-based physicians for diagnosis and treatment of stricken cardiac patients before their arrival at a medical facility.[1]

4. Federal and State programs for standardizing medical communications capability are also playing a part. In recent years, we have seen establishment of Federal and State EMS organizations who are specifically charged with providing guidance in the use of new radio communications techniques and procedures for medical functions. Their activities have led to widespread implementation of emergency telephone access systems ("911"), and they are responsible for insuring compliance with such new federal specifications as those requiring two-way radio capability in all medical ambulance vehicles.[2] We have followed, too, the introduction of new funding programs, private and State, as well as Federal, which are providing dollars for planning, training, equipment, and operations in EMS radio systems. One federal program just underway is based upon the Emergency Medical Service Systems Development Act of 1973, an amendment to the Public Health Services Act (42 USC 201). This law authorizes grants under the administration of the Secretary, U.S. Department of Health, Education and Welfare (HEW), for research and development of area-wide EMS communications systems.

5. All of these activities are producing a modern communications picture which promises to significantly outmode many of today's limited medical radio systems. This fact was emphasized in the Commission's contract study prepared by ATS, where emergency medical communication requirements involving more flexible and expanded radio capabilities were identified. There is, for example, the development of the "common system" approach to the conduct of medical radio operations. This involves a determination of a medical service area—whether it be a county, a city, a geographic region, or any combination of these—for development of an area-wide coordinated radio communications plan whereby all medical communication activities are integrated through common dispatch or control centers to optimize

[1] Seven pairs of frequencies in the 460 MHz band were allocated to the SERS for biomedical ambulance-to-hospital telemetry and ambulance dispatch operations in the Commission's Report and Order adopted in Docket 19261 on March 23, 1972. (34 FCC 2d 241)

[2] See Federal Specification KKK–A–1822, developed by the United States Department of Transportation, and approved January 2, 1974, for Ambulance Emergency Medical Care Vehicles.

the area's use of radio spectrum and facilities in meeting the needs for prompt emergency medical treatment.[3]

6. It has also been demonstrated in a number of studies that the present complex of available frequencies, and the rule provisions which cover their use, are not adequate or are, at best, a piecemeal approach for meeting many medical communication requirements. For instance, other than for some exclusive telemetry channels and some high band paging frequencies, medical communications, whatever their nature, are generally conducted on channels shared for non-medical as well as medical activities, and for non-emergency as well as emergency traffic. Currently, nearly all medically-related communications are conducted in the Special Emergency Radio Service, where five frequencies in the 155 MHz VHF band are allocated to be utilized on a shared basis exclusively for hospitals and associated ambulances. However, only one of these frequencies, 155.340 MHz, is used extensively for these purposes. Eight additional 155 MHz band frequencies are allocated to the service to be shared for a number of other categories of licensees including rescue squads, school buses, and disaster relief organizations. However, in addition to the practical limitations on shared frequencies, there are adjacent channel coordination requirements that severely reduce the number of areas in which these frequencies are able to be used.[4] Moreover, because of the limited number of suitable frequencies available in the SERS, licensees are not permitted two-frequency operations or the use of mobile relay methods.

7. Medical operations being conducted in other frequency bands or radio services include bio-medical ambulance-to-hospital telemetry and dispatch systems that are authorized in the SERS on seven pairs of frequencies in the 460 MHz UHF band, while in-hospital telemetry operations can be licensed under Part 15, and on certain low-power industrial frequencies. Paging operations are permitted on certain SERS frequencies at 35 and 43 MHz, as well as on Business Radio Services channels. In the Fire Radio Service, and to a lesser extent in the Police and Local Government Radio Service many communities provide medical ambulance dispatch service as part of police and fire communication systems.

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[3] In regulations proposed for administration of grants under Section 1203 of the Emergency Medical Service Systems Development Act of 1973 (Public Health Services Act—42 USC 201), HEW has noted that an area-wide communication plan for EMS systems should "join the personnel, facilities, and equipment of the system by a central communications system so that requests for emergency health care services will be handled by a communications facility which utilizes emergency medical telephonic screening; utilized (or, within such period as the Secretary may prescribe, will utilize) the universal emergency telephone number 911; and will have direct communication connection and interconnections with the personnel, facilities, and equipment of the system and with other appropriate emergency medical services."

"A central communications system," HEW proposed, "includes a system command and control center which is responsible for establishing those communication channels and providing those public resources essential to the most effective and efficient emergency medical services management of the immediate problem, and which has the necessary equipment and facilities to permit immediate interchange of information essential for the system's resource management and control. The essentials of such a communications center are that: (a) all requests for system response are directed to the center; (b) all system resource response is directed from the center; and (c) all system liaison with other public safety and emergency response systems is coordinated from the center. Except to the extent provided (elsewhere), the center need not direct or control medical care or treatment."

[4] These coordination requirements are being relaxed to some extent in Docket 19523. The Commission anticipates issuing a Report and Order in this Docket in the near future.

IRAC AND ATS PROPOSALS AND PROPOSALS IN DOCKET 19576 AND DOCKET 19643

8. Changes proposed in Docket 19880 would replace the present fragmented structure for medical communications with a more unified and comprehensive medical radio service category in the Commission's Rules. In major part, this would be accomplished by allocation of additional frequencies in the 450–470 MHz UHF band to permit the development of full-capacity medical systems. It was not contemplated, however, that licensees of present medical systems that are operated in the 155 MHz VHF band would be required to change frequencies or the basic nature of their system; although it is clear that the advantages of the "common system" licensing and operational method would probably encourage such change.

9. The major proposals in this proceeding are contained in the report of the Interdepartment Radio Advisory Committee(IRAC) to the Office of Telecommunications Policy. The report recommends that the Commission establish a new EMS radio service and emphasized the need for allocation of dedicated spectrum which will permit the development of common systems that integrate all medically related communication requirements, both within any medical service area and from one area to another. Similar proposals are included in the recommendations contained in the Commission's contract study report developed by ATS. Frequency allocations recommended are in both the VHF and UHF bands. It is proposed that operations on UHF frequencies be categorized for specific medical activities to include command and control (dispatch), medical instruction, paging, bio-medical telemetering, common-calling (inter-system and intra-system), and hospital-to-hospital.

10. IRAC's report also recommends that the frequency 152.0075 MHz (a 15 kHz splinter channel) be made available for regular paging; the frequencies 150.775 and 150.790 MHz,[5] which are now government military channels, are recommended to be reallocated for low-power (five watts) medical paging; and another government frequency 162.6625 MHz, is proposed for medical operations. As to present frequencies in this band, the report proposes that 155.340 MHz be "reallocated from existing hospital routine and administrative communications use" for common-calling between licensees of different systems. It is also recommended that 155.280 MHz be reallocated for use in hospital-to-hospital (point-to-point) communications.

11. In the UHF bands, IRAC has proposed reallocation of 449.850–449.950 MHz for use for medical paging. This band is now allocated primarily for government radiolocation operations and, on a secondary basis, for amateur radio operations. Reallocation is also proposed of the frequency pairs 453.025/458.025, 453.075/458.075, 453.125/458.125, and 453.175/458.175 MHz, from the Local Government Radio Service, where they are assignable for highway call box operations, to an EMS category for medical systems. The IRAC report also advocated removal of the present limitations on the 460 MHz band bio-

[5] Actually IRAC had originally proposed 150.785 MHz, but in order to preserve the standard 15 kHz channel spacing, it was agreed to change this to 150.790 MHz.

medical telemetry frequencies to permit their use for other types of medical communications, including doctor-talk circuits, dispatch, and data handling. Finally, it is proposed that the presently unallocated frequency pairs 463.125/468.125, 463.150/468.150, and 463.175/468.175 MHz be made assignable for EMS operations.

12. The proposal in the related rule making Docket 19576 is to establish an eligibility category in the SERS to cover Comprehensive Health Services organizations. These groups provide complete medical care service through their clinical facilities to local communities, usually in rural, low income areas. The other proposal, in Docket 19643, is for allocation of an exclusive frequency, 157.450 MHz, for limited-area, hospital one-way paging systems. It was proposed that present medical paging operations that are conducted on regular VHF two-way voice channels in the SERS would be required to be shifted to this frequency if harmful interference to voice operations occurred.

COMMENTS

13. Proposals in these procedings have generated a great deal of interest and response as reflected by the more than two hundred formal comments that were received. The comments were very helpful in their extensive treatment of medical radio communication problems and recommended solutions, and have afforded the Commission considerable guidance for resolution of the complex issues involved. A complete listing of the parties who filed comments is attached as Appendix A.

14. Most of the comments concern the inquiry and proposals in Docket 19880. Almost without exception, parties directly involved in medical radio operations endorsed the proposal for a separate and distinct radio service category with dedicated spectrum that could accommodate total requirements for medical communication systems. Generally, the comments also agreed that the allocation of frequencies in the UHF bands is the reasonable solution to meeting these requirements in light of the limited spectrum available at VHF. A number of parties, however, apparently plan to stay with presently assigned systems in the 155 MHz VHF band and expressed concern as to their prospects for being permitted to continue those operations, at least until equipment investment is amortized. There was also concern as to the specific nature of a medical radio service in terms of eligibility and permissible communications. Here, while eligibility of hospitals, physicians, and medical ambulances was assumed, there was mixed reaction to including such related categories as nursing homes, public health organizations, veterinarians, oral surgeons, and rescue organizations. Some parties also recommended that we restrict licensing in a medical radio service to participants in area-wide medical communication plans, or that we license only state divisions and local governments which coordinate such plans. With respect to permissible communications, issues were raised as to permitting medical administrative traffic in addition to emergency transmission; as to whether paging operations, both voice and tone, and particularly wide-area paging, should be allowed; and as to whether we should make provision for telemetry operations on VHF frequencies.

15. The majority of the comments dealt with the proposed frequency allocations. In general, users directly involved in medical radio operations were enthusiastic as to the communications capabilities afforded by additional exclusive spectrum in the UHF bands. Many parties, however, indicated that they had hoped for additional allocations in the 155 MHz band for expansion of present systems. Nevertheless, most agreed with the necessity for utilizing UHF frequencies and, apparently, intend to establish "common systems" for meeting their total medical communication requirements.

16. The frequency plan developed by IRAC was generally acceptable to most parties. Some comments sought greater flexibility in the recommended frequency allocation structure. For example, there were parties advocating local determination as to the types of communications for which frequencies would be assigned, while others urged primary categorizations of frequencies for such functions as dispatch, medical coordination, doctor-talk etc., with provision for departure from these categories, as needed, on a secondary basis. There were objections to specific IRAC proposals for "national calling" frequencies to be used to interconnect medical systems from one area to another, and for frequencies for hospital-to-hospital intercommunications. A number of parties felt that dedication of channels for these purposes was not justified for what they considered to be relatively isolated requirements. For paging channels, a large number of comments were submitted by amateur radio operators and organizations opposing use of the government band 449.850–449.950 MHz for this purpose. There were many objections, too, as to the proposed reallocation of Local Government highway radio call box frequencies in the 450 MHz band for EMS operations. These parties wanted to retain the frequencies for highway call box purposes where they could be used for citizen access to medical control centers for required assistance.

17. We received many alternative frequency allocation plans that are well conceived. For one, in its contract study, ATS has developed a frequency program that is designed for interconnecting contiguous areas for mutual medical assistance. Many of the frequency allocation programs included recommendations for, among other things, mobile relay operations in the 460–470 MHz band. Presently, the limited number of frequencies available for medical operations at VHF precludes authorization of relay or repeater systems. One plan incorporates a requirement that equipment be capable of multi-channel operations to cover all UHF frequencies to assure that each licensee's operations are compatible with both intra-system and inter-system area-wide programs. There were variations in paging capability from one plan to another, with request for provision for response on the same frequency in one program; request for limited-area, as against wide-area paging in another plan; and no provision at all for paging in still another program. A few allocation plans saw the need for full-duplex operations between hand-carried units and hospitals in bio-medical telemetry systems. Here, there were recommendations that highway radio call box frequencies in the 450 MHz band be utilized additionally for this purpose. Finally, there were requests for clarification as to permissibility of "multiplexing", continuous-tone squelch, "trunking", slow-

scan video, digital data transmission, facsimile, and other techniques which may be associated with land mobile systems.

18. The comments in Docket 19576 supported the proposal that an eligibility category for Comprehensive Health Services be established in the SERS which will permit these organizations to conduct their medically-related communication operations. These communication requirements logically fall within the categories of needs to be covered by the proposed medical radio service and are being considered in that context herein.

19. In Docket 19643, the comments generally supported the proposed allocation of an exclusive one-way hospital paging channel, 157.450 MHz for limited-area medical operations. There were requests, however, for wide-area paging capability as well. Also, a number of parties argued that one exclusive paging channel would not serve to meet anticipated requirements, especially if we were to require, as proposed, present hospital paging operations to shift to the new frequency.

RULE CHANGES ADOPTED FOR MEDICAL SERVICES

20. In our consideration of proposals in these rule making proceedings, the Commission has attempted to establish the nature and extent of licensing and operational standards needed for meeting medical radio communication requirements. As indicated, we have relied in large measure upon information and recommendations developed in the comments. We have also worked closely on a number of committees and in regional conferences with other Federal, State and local government representatives, manufacturers, and medical and technical organizations who are directly involved in EMS planning and operations. Two patterns of importance with respect to an understanding of medical requirements have emerged. First, in many areas of the country, medical systems are being developed, often on a statewide basis, to operate on the 150 MHz band frequencies that are presently available in the Special Emergency Radio Service. Many of these licensees indicate that they want to stay with VHF systems. They note that although these are limited systems, they are nevertheless effective for operations within the parameters of the particular licensee's needs. The second picture that emerges involves users who have made only tentative efforts in the planning and development of medical communication systems. These parties have been discouraged by the interference problems and operational limitations of VFH channels in their particular locations. Many of these licensees are already conducting bio-medical telemetry operations in the 460 MHz band and they see these rule changes proposals for additional UHF allocations as the necessary means to expand to a "total" EMS radio system. Their views were summarized in the comments from Dr. John Turner of Dade County, Florida:

> **The Special Emergency Radio Service no longer meets the needs of medicine. Basically, the Special Emergency Radio Service is intended for use by highly independent entities who usually have only the most simple demands to make of radio. The total amount of equipment authorizable for a single licensee tends to be quite limited. The limited total capital investment by an individual licensee has failed to justify the development of technically qualified staffs. In general, radio for medicine within the Special Emergency Radio Service has led**

to simple unsophisticated, unimaginative use of spectrum. It has produced a "way of life" or patterns of usage, which meet limited needs in certain areas. Honorable and capable people serve the public within the framework of the Special Emergency Radio Service but it is difficult (probably impossible) to meet the immediate future needs of medicine within the regulatory framework and/or the spectrum allocations provided within the Special Emergency Radio Service.

21. It is clear from this analysis that whichever direction is taken in the establishment of medical radio systems, the proposals are both timely and urgent. Many parties expressed this urgency and asked for prompt action to effectuate the basic purposes in these proposals. The Commission agrees and we have determined that it is in the public interest to amend the rules as follows to establish a separate service category with dedicated spectrum that can more fully accommodate licensing and operation of medical radio systems. Rule changes being adopted, in accordance with the Notices in the various proceedings herein, amend Parts 2 and 89 of the Commission's Rules.

THE MEDICAL SERVICES CATEGORY

22. In Part 89, primary changes in the Special Emergency Radio Service Rules incorporate the present hospital, physician, and ambulance, categories into a new and more comprehensive division for Medical Services.[6] This category will cover the operations of licensees who regularly provide or coordinate communications for the rendition and delivery of medical services to the public.[7] These include, in addition to hospitals and ambulance companies, any institutions and organizations which regularly provide medical services in clinics, public health facilities, and similar establishments. Thus, under this expanded provision, qualified public or private nursing and old-age homes can be licensed for their medical operations, as well as comprehensive public health organizations of the nature contemplated in Docket 19576.

23. In the eligibility provided for physicians, we have taken this opportunity to include oral surgeons. It has been shown that these practitioners are often required to participate in EMS activities. Also, we have relieved a present restrictive provision, that is no longer considered to be necessary, to expand the use of radio to all members of medical associations.

24. Rescue organizations are made eligible under the Medical Services category, when they need to meet communication requirements of participation in medical activities. A separate rescue organization category is being retained in the SERS for non-medically related search and patrol activities of these groups (Section 89.505). It is noted that to the extent feasible, these provisions meet the basic objectives in the comments received from the Colorado Search and Rescue Board, where it was requested that a class of service "to be denoted Land Search and Rescue Radio Service" be created, "to be coordinated with a proposed Emergency Medical Radio Service."

25. Eligibility under Medical Services also includes associations

[6] Veterinarians will continue in a separate category under Section 89.507 of the Rules.
[7] Federal entities engaged in these operations are not licensed directly by the Commission but will be participating in these EMS systems under other licensing authorities.

comprised of other eligible organizations and entities, such as a county hospital association, or an association of ambulance operators, who may hold a single license to cover communication operations of their members. This provision should enhance the development of common systems by simplifying the licensing requirements for participation in an area-wide medical comunications plan. Similarly, governmental entities and agencies have been made eligible to hold licenses for coordinated medical operations in their areas of jurisdiction. An example of this latter licensing arrangement is Orange County, California, which will hold the licenses for all of the eligible medical organizations under a communications plan that provides for county dispatch and coordination of public and private medical services radio operations in the area.

26. It is recognized that there often exist requirements for persons other than those shown as eligible to participate in Medical Services activities. A provision is included, therefore, to permit communication units of a licensed hospital, ambulance operator, etc., to be operated in a vehicle or be hand-carried by any person with whom cooperation or coordination is required for medical services activities.

27. Consistent with our emphasis on area-wide, centrally-coordinated medical communication systems, provision is included in the Medical Services category for voluntary submission of communications plans. Many of these plans are being developed by State EMS offices for integrated state-wide medical radio operations; other plans are more narrowly regionalized. In any event, the Commission is arranging to maintain files in Washington, D.C., for public inspection of these plans for the guidance of applicants. Also, a listing of plans that are relevant to an applicant's area of operation will be furnished to enable applicants to request copies from plan developers.

28. A number of parties sought assurance that they would be able to meet administrative requirements indirectly relating to their medical services activities. Many hospitals, for example, use radio in connection with security and other administrative responsibilities, and physicians often use radio for office activities. These requirements are presently authorized to be met in systems licensed in the Special Emergency Radio Service and we have included provisions permitting operations of this nature by license in the Medical Services category on a secondary, non-interference basis.

UHF FREQUENCY ALLOCATIONS

29. The major allocation proposals being adopted are in the 450–470 MHz band where we have been able to provide a frequency complex that should prove sufficient with proper system planning to afford full capability and flexibility for EMS operations. The finalized allocations reflect recommendations, in the IRAC proposals and in many of the comments, for categorization of frequencies, with certain channels being assignable for both primary and secondary uses. The specific frequencies and the purposes authorized are as follows:

(a) The paired frequencies 460.525/465.525 and 460.550/465.550 MHz are available for dispatch operations in medical

systems. They may also be designated for common calling for intersystem mutual assistance.

(b) The paired frequencies 463.000/468.000, 463.025/468.025, and 463.050/468.050 MHz, are retained for primary use in ambulance to hospital bio-medical telemetry operations. On a secondary basis, subject to non-interference to telemetry operations, these frequencies may be utilized for any other permissible communications purposes authorized for medical services.

(c) The paired frequencies 463.075/468.075, 463.100/468.100, 463.125/468.125, 463.150/468.150, and 463.175/468.175 MHz are primarily assignable for communications between medical facilities, vehicles, and personnel related to supervision and instruction for treatment and transport of patients in the rendition and delivery of medical services. On a secondary basis, subject to non-interference to the foregoing, these frequencies may be utilized for any other permissible communications purposes, authorized for medical services, including bio-medical telemetry.

(d) The frequencies 458.025, 458.075, 458.125, and 458.175 MHz are assignable only for use in bio-medical telemetry/voice systems to transmit from a portable unit to an ambulance for automatic retransmission (mobile repeater) from a patient to a hospital or other medical-care facility. These frequencies are shared for highway radio call box operations with stations in the Local Government Radio Service, and are limited to the same transmit output power of one watt.

30. The provisions for use of these UHF allocations incorporate the features desired for medical systems as developed in the studies and recommendations we have considered. For example, for those users requiring additional telemetry capability, coordinated system planning should now enable them to utilize as many as eight frequency pairs for this purpose. On the other hand, if it is locally determined and mutually agreed within a medical service area to use all channels for medical purposes other than telemetry, the eight pairs of 463/468 MHz channels may be so utilized by taking advantage of both the primary and secondary usage provisions. To facilitate this flexibility, the Commission intends to assign these eight contiguous frequency pairs in a "block" to enable licensees to use all of the channels involved and to modify use of any of the frequencies to meet changing system requirements. Further, the rules will require licensees to employ multichannel equipment that is designed for use of any of these frequencies, or all of them, if necessary. This will contribute to greater efficiency in selection and utilization of channels, and will enable licensees to be compatible for participation in the development of common systems under medical communication plans. Equipment of this nature is already in use to some extent in present bio-medical telemetry operations, and we have been assured by manufacturers that required equipment can be made generally available within a short period.[8]

[8] A special showing of capability to meet these requirements will be required for type-acceptance of equipment.

31. The problem of how, if at all, to use the highway call box frequencies in connection with medical systems has been resolved by making the 458 MHz band highway call box channels available to be shared for extended portable telemetry operations. This shared use, when limited to one-watt power, appears to be compatible and answers the requirement for duplex capability for portable operation sought in a number of pending applications for bio-medical telemetry systems. Further, as noted in a number of comments, when used for highway radio call box operations, these frequencies will be invaluable in providing citizens access to EMS systems.

32. New rules for operations on UHF frequencies will permit the use of mobile relay stations for extending the transmission range of mobile service communications. Fixed-repeater station operations may be authorized only on frequencies available to operational-fixed stations (generally, frequencies in the 72–76 MHz band, and frequencies above 952 MHz; but, see also, Section 89.101(p) for secondary fixed station frequencies in the 450–470 MHz band).

33. We have noted comments regarding certain specialized communication techniques on these UHF frequencies. Some parties plan to "multiplex" voice and telemetry tones to permit simultaneous full-duplex voice and medical telemetry transmission. This is a permissible technique already being employed in some currently authorized bio-medical telemetry systems. Tone-coded squelching methods are also being utilized in accordance with § 89.105 of the rules. "Trunking", for multiple-access of block-assigned frequencies, is a well recognized technique that requires no special authorization. Some parties plan to use television in certain medical communications applications. This technique is authorized in microwave frequency bands above 952 MHz which are available to all licensees in the Special Emergency Radio Service.

34. One type of operation we are not providing on these UHF frequencies is paging communications. Paging operations have generally proven to be incompatible with regular two-way radio systems shared on the same channels, and we are requiring that they be conducted on separate paging-only frequencies. It had been proposed that frequencies in the 449.850–449.950 MHz band be reallocated for these paging operations. These frequencies are presently available primarily for government radiolocation operations and, secondarily, for amateur stations. However, under treaty agreements to which the U.S. is a party, use of these frequencies is restricted along border areas. Further, there is no apparent need for paging to be conducted on UHF frequencies and these operations will be permitted instead in lower frequency bands, as discussed with respect to VHF frequency allocations.

VHF FREQUENCY ALLOCATIONS

35. The Commission has covered in some detail the limitations of the 150 MHz VHF band for meeting EMS system requirements. Essentially, we believe the solution lies in the use of 450–470 MHz UHF band frequencies, where full-capacity systems can be developed, and we anticipate that most new medical systems will be established in that part of the spectrum. Nevertheless, practically all present medical com-

munications are being conducted in the VHF region, and it is recognized that these operations will remain intact for some time to come. To somewhat ameliorate the communication difficulties of these systems, a number of rule changes applicable to VHF operations have been adopted, as follows.

36. In Docket 19643, we considered whether to prohibit paging operations on regular two-way voice channels in the VHF band. As noted, paging communications have been demonstrated to be disruptive to voice operations on these frequencies, and it was proposed to allocate the frequency 157.450 MHz exclusively for low-power (30 watts), limited-area, hospital paging operations. This proposal is being adopted. In addition, the frequencies 152.0075 and 162.6625 MHz were recommended for medical system operations in the IRAC report and are suitable for wide-area paging operations. These frequencies are also being allocated for paging.

37. New medical paging systems will be authorized on the foregoing VHF band frequencies being made available and also on the present high-band hospital paging channels, 35.64, 35.68, 43.64 and 43.68 MHz, which we are modifying to make them generally assignable by deleting the hospital limitation. Present paging operations on other frequencies may be continued until January 1, 1980, subject to not causing harmful interference to regular two-way voice operations. Authorized paging is limited to one-way operations and no provision is being made for response on paging frequencies, since such operations minimize the effectiveness and availability of these frequencies.

38. IRAC had proposed that the government frequencies 150.7 and 150.7 MHz be made available for low power medical paging systems since they are limited to five watts output power. However, with this power, these frequencies are unsuitable for extended-area paging operations. They do, however, meet the requirement for communicating from a portable (hand-carried) unit (not from a vehicle) to an ambulance or other emergency vehicle for automatic retransmission (mobile-repeater) to a base station facility on a regular mobile frequency; and provision is included for this usage.

39. IRAC had also proposed that the frequency 155.340 MHz be reallocated for common calling purposes. However, this frequency is presently extensively authorized for general hospital operations and there were a number of objections to changing from this use. We are retaining this channel for general medical services, but will also permit it to be designated by common consent as an inter-system mutual assistance frequency under area-wide medical communications plans.

40. Finally, we have looked at the problem of interface between VHF and UHF systems. This will take on increasing importance as new UHF systems begin to emerge. Accordingly, we have determined to include as part of the rules covering mobile relay stations (§ 89.523(a)) provisions to permit cross-band mobile relay operations as required for coordination between VHF and UHF systems.

SUMMARY

41. The specific rule changes adopted in this proceeding are set forth in the attached Appendix B. Essentially, these amendments follow

recommendations and proposals from the Office of Telecommunications Policy and other parties who sought establishment of a new radio service to cover operations for medical services. The new rules provide a Medical Services category in the Special Emergency Radio Service. This category authorizes licensing and operation of medical radio communication systems for the rendition and delivery of medical care to the public. Expanded eligibility provisions include, in addition to hospitals, physicians, and ambulance operators, facilities such as public health organizations, nursing homes, and other institutions and organizations which regularly provide medical services. Additional frequencies, primarily in the 450–470 MHz UHF frequency band, are allocated for medical services operations. Emphasis is placed upon flexibility in permissible communications with primary and secondary uses permitted to meet differing requirements in different areas. Allocations include two frequency pairs at 460/465 MHz for dispatch and common calling or mutual aid communications; three frequency pairs at 463/468 MHz, available primarily for bio-medical telemetry operations, and secondarily for other medical requirements; five additional frequency pairs at 463/468 MHz, available primarily for general medical requirements, and secondarily for telemetry and other medical or medically-related communications; and four frequencies at 458 MHz (shared for highway call box operations) for extended portable operations in telemetry systems. Present VHF frequency allocations are retained and are augmented by three additional frequencies for one-way medical paging systems; and two low-power frequencies at 150 MHz are available for extended portable operations. Mobile relay operations which are presently precluded in the SERS, are authorized in the UHF bands and, also, to a limited extent, on VHF frequencies when required to cross-band UHF and VHF medical communication systems. Frequencies for use in Medical Services are shared by all licensees in an area. It is expected, therefore, that the most efficient and effective use of new frequencies being made available in the UHF bands will only result from user cooperation in the development of common systems involving the establishment of central-dispatch and control centers for coordinated EMS operations under area-wide communication plans. Such common systems promote full-capacity operations and are emphasized and encouraged in the new rules.

CONCLUSION

42. In consideration of the foregoing, the Commission finds that adoption of the rule changes proposed in Docket 19576, Docket 19643, and Docket 19880, as modified herein, will serve the public interest, convenience and necessity.

43. Accordingly, pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, IT IS ORDERED. That, effective August 15, 1974, Parts 2 and 89 of the Commission's Rules ARE AMENDED as shown in the attached Appendix B. IT IS FURTHER ORDERED, That these proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION.
VINCENT J. MULLINS, *Secretary.*

APPENDIX A

A. COMMENTS AND REPLY COMMENTS IN DOCKET 19880

Alabama Department of Public Health
Althoff, Thomas H.; Sylvania, Ohio
American Association of State Highway & Transportation Officials, Inc.
American College of Emergency Physicians
American College of Surgeons
American Hospital Association
American Medical Asociation
American Radio Relay League, Inc.
American Trauma Society
Arapahoe Radio Club, Englewood, Colorado
Arkansas Department of Health
Associated Public-Safety Communications Officers, Inc.
Aurora FM Amateur Radio Repeater Association, Inc., Aurora, Ill.

Beaufort-Jasper Comprehensive Health Services, Inc.
Berryessa Amateur Radio Klub, Inc., Sacramento, Calif.
Bloethe, William G.; Ames, Iowa
Brandt, Henry Robert
Brask, Thomas B.; New Haven, Connecticut
Burnett, Joseph D., Jr.; Aurora, Colorado

California Department of Health
Capital Area Comprehensive Health Planning Council, Inc.; Richmond, Va.
Capwell, Allen; Sheriff, Wyoming County, New Jersey
Clark County Nevada District Health Department
Collins, Lewis D.; Arlington, Massachusetts
Colorado Council of Amateur Radio Clubs, Inc. (CCARC)
Community Emergency Care, Inc.
Connecticut Advisory Committee on Emergency Medical Services
Connecticut Hospital Association

Delaware County Emergency Health Services Council, Inc.
Denver Radio Club, Inc.
Durante, James M.; Elgin, Illinois

Electronics Industries Association, Land Mobile Section, Communications & Industrial Electronics Division (EIA)
Emergency Department Nurses Association, Upland, Pa.
Emergency Medical Services Administrators Assn. (EMSSA)

Fair, Joseph; Littleton, Colorado
Florida Department of General Services, Div. of Communications
Florida Department of Transportation

General Electric Company
Glass, Clyde E.; Loveland, Colorado
Grauer, Paul; Wilson, Kansas
GTE Service Corporation

Haldeman, Ellwood W.; Philadelphia, Pa.
Hashimoto, Lloyd K.; Laramie, Wyoming
Hospital Council of Northern California (HCNC)
Houston, Texas Fire Department

Illinois Department of Public Health, Div. of EMS & Highway Safety
Illinois Hospital Association
Illinois Repeater Council
International Bridge, Tunnel and Turnpike Assn. (IBTTA)
International Municipal Signal Association (IMSA)

Kaatz, Gary F.; Streamwood, Illinois
Kansas City Amateur Radio Club, Inc.
Kelsey, William F.; Chino, California
Koons, Robert L.; Englewood, Colorado

Lambrew, Costas T., M.D.; Stony Brook, New York
Levy, Robert S.; Aurora, Colorado
Lifland, Thomas A.; Cedarhurst, New York

109-001—74——4

Long Island Mobile Amateur Radio Club, Inc.
Louisiana Hospital Association
Manson, D. J.; Missouri Repeater Council
Massachusetts General Hospital
Massachusetts Institute of Technology, UHF Repeater Association
Mayo Clinic, Emergency Care Clinic, Rochester, Minnesota
Mennen-Greatbach Electrionics, Inc.
Merrill, Charles; Santa Monica, California
Mid-America FM Association, Inc.
Mid-States Repeater Society
Mo-Kan Amateur Repeater Club
Motorola, Incorporated
Mount Vaca Radio Club, Inc.
Nagel, Eugene L., M.D.; Miami, Florida
Nassau County Police Department
National Association of Business & Educational Radio (NABER)
National Ski Patrol System, Inc.
Nelsch, Donald R.; Cuyahoga Falls, Ohio
New England Council for EMS Communications Committee
New Jersey Hospital Association
New Mexico Regional Medical Program
New York Department of Health
New York State Technical Advisory Committee (STAC)
North Carolina FM Repeater Association, Inc.
Northeast Repeater Association, Inc.
Northern California Chapter of Associated Public-Safety Communications Officers, Inc. (NCAPCO)
Northwestern Nevada Emergency Medical Services Council
Owens, J. Cuthbert, M.D.; Denver, Colorado
Parma Radio Club, Cleveland, Ohio
Peavler, Robert J.; Kirksville, Missouri
Philadelphia Health Management Corporation
Porrett, Edward C.; Arlington Heights, Illinois
Reynolds, Howard W.; Hagerstown, Maryland
Rule, Robert R.; Laramie, Wyoming
San Antonio/Bexar County Emergency Medical Services Council
San Francisco Department of Electricity
Sarasota Fire Department
Schlesinger, Gordon; San Diego, California
Spectra Associates, Inc.
State of Colorado
Tele-Engineering Corporation
Tennessee Department of Health, EMS Division
Texas Medical Association
Tri-Med, Charleston, South Carolina
Tulsa Repeater Organization, Inc.
Turner, John, M.D.; Jacksonville, Fla.
U.S. Department of Health, Education & Welfare
U.S. Department of Transportation
Vogt, Fred B., M.D.; Austin, Texas
Welch, Eugene E.; Waseca, Minnesota
Western Massachusetts Health Planning Council, Inc.
Widmer, Rex; Kansas City, Missouri
Wisconsin Emergency Medical Services Program, University of Wisconsin-Madison
Zwisler, C. F., Jr.; Mankato, Minnesota

REPLY COMMENTS (19880)

American College of Cardiology
American Radio Relay League

Associated Public-Safety Communications Officers, Inc.
Colorado Council of Amateur Radio Clubs, Inc.
Communications Specialties Company, Aurora, Colorado
Emergency Medical Services Systems Subcommittee on Communications of the Interagency Committee on EMS Systems
Florida Department of General Services, Div. of Communications
Illinois Chapter of Associated Police Communication Officers, Inc.
Minnesota Mining and Manufacturing Company
National Association of Business & Educational Radio, Inc. (NABER)
Rochester Regional Medical Program
Vogt, Fred B.; Austin, Texas

B. COMMENTS AND REPLY COMMENTS IN DOCKET 19643

Acadian Ambulance Service, Morgan City, La.
Andrew Corporation
American Hospital Association
Arizona State Department of Health
Arnot-Ogden Memorial Hospital, Elmira, N.Y.
Associated Public Safety Communications Officers
Baton Rouge General Hospital
Bethesda-Chevy Chase Rescue Squad, Inc.
Beth Israel Hospital, Passaic, N.J.
Bloomington Hospital, Bloomington, Ind.
Boulder County Sheriff's Department
Butterworth Hospital, Grand Rapids, Michigan
Caney Valley Memorial Hospital, Wharton, Texas
Colorado Search and Rescue Board
Community General Hospital, Thomasville, N.C.
Greater Cleveland Hospital Association
Holy Cross Hospital, Merrill, Wisconsin
Hospital Association of New York State
Hospital Association of Pennsylvania
Illinois Civil Defense Agency
Indiana Hospital Emergency Radio Network
Iowa Hospital Association, Inc.
Iowa State Department of Health
Kansas Hospital Association
Lafayette General Hospital, Lafayette, La.
Lancaster General Hospital, Lancaster, Pa.
Massachusetts Hospital Association
Memorial Hospital, Philadelphia, Pa.
Memorial Medical Center, Corpus Christi, Texas
Mercer Hospital, Trenton, New Jersey
Mid-America Regional Council, Kansas City, Mo.
Missouri Division of Health and Welfare
Multitone Electronics, Springfield, N.J.
National Association of Business and Educational Radio
New England Council of Emergency Medical Services
New Jersey Hospital Association
New Jersey State Department of Health
New York State Bureau of Emergency Medical Services
North Claiborne Hospital, Haynesville, La.
Northern California Chapter of Associated Public Safety Communications Officers, Incorporated
Oakland First Aid Squad
Oklahoma Trauma Research Society, Inc.
Radiocall Paging Service, Oklahoma City, Okla.
Rapides General Hospital, Alexandria, La.
Research Hospital and Medical Center, Kansas City, Miss.
Roman Memorial Hospital, Salisbury, N.C.

Spectra Associates, Inc.
Spohn Hospital, Corpus Christi, Texas
St. Francis Hospital, Tulsa, Oklahoma
St. John Medical Center, Steubenville, Ohio
St. Mary's Hospital, Reno, Nevada
St. Vincent Hospital, Santa Fe, N.M.

Tennessee Department of Health
Tennessee Hospital Association
Terrebonne General Hospital, Houma, La.
Texas Hospital Association
Texas State Department of Health
Touro Infirmary, New Orleans, La.
Town and Country Animal Clinic, Newton, Kansas
Tri-State Regional Medical Program, Boston, Mass.
Turner, John; Jacksonville, Florida

Underwood Memorial Hospital, Woodbury, N.J.
University of Kansas Medical Center
U.S. Department of Health, Education & Welfare
U.S. Department of Transportation

Valley Hospital, Ridgewood, N.J.
Vermont State Health Department

Warner Brown Hospital, El Dorado, Ark.
Western Massachusetts Health Planning Council
Wichita-Sedgwick County Department of Community Health
Wilmington Medical Center, Wilmington, Delaware

C. COMMENTS AND REPLY COMMENTS IN DOCKET 19516

Associated Public-Safety Communications Officers, Inc.

Beaufort Civil Defense Headquarters, Beaufort, S.C.
Beaufort-Jasper Comprehensive Health Service, Inc., Beaufort, S.C.

Candler General Hospital, Savannah, Georgia
Central Virginia Community Health Center
Community Health Project, Hayneville, Ala.
County Council of Beaufort County, Beaufort, S.C.

Georgia Hospital Association

Health Co., Inc., Soul City, N.C.

Jackson Hinds Comprehensive Health Center
Jasper County Council, Ridgeland, S.C.
Jasper County General Hospital

Keyserling, Ben H., M.D., Beaufort, S.C.

Low County Regional Planning Council, Yemassee, S.C.

Maricopa Community Health Network
Medical University of South Carolina

National Association of Business and Educational Radio
National Ski Patrol System, Inc.

Saint Joseph's Hospital, Savannah, Ga.
Sangre de Cristo Health Systems
Savannah State College, Savannah, Ga.
Sea Island Comprehensive Health Care Corp., John's Island, S.C.
Southeastern Kentucky Regional Health Demonstration, Inc.

U.S. Department of Health, Education & Welfare
U.S. Office of Economic Opportunity

Wallace, L. W., Sheriff of Beaufort County

APPENDIX B

Parts 2 and 89 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations

1. In § 2.106, new footnote US216 is added in column 6 of the table for the frequency bands 150.05–150.8, 150.8–157.0375, 162.0125–173.2, and 450–470 MHz; and new footnote NG111 is added for the frequency band 157.1875–162.0125 MHz. Columns 5 and 6 of the table and the listing of footnotes are amended to read as follows:

§ 2.106 Table of Frequency Allocations.

United States	
Band (MHz) 5	Allocation 6
* * *	* * *
150.05–150.8	G (US216)
150.8–157.0375	NG (US216)
* * *	* * *
157.1875–162.0125	NG (US77) (US200) (NG111)
162.0125–173.2	G (US8) (US11) (US13) (US216)
* * *	* * *
450–470	NG (US87) (US100) (US201) (US209) (US216)
* * *	* * *

US216 The bands 150.7675–150.7975, 152–152.0150, 162.6500–162.6750, 460.5125–460.5625, 462.9875–463.1875, 465.5125–465.5625 MHz may be used for Government or Non-government operations in medical radio communications systems.

* * * * * * *

NG111 The band 157.4375–157.4625 MHz may be used for one-way paging operations in the Special Emergency Radio Service.

* * * * * * *

B. Part 89—Public Safety Radio Services

2. In § 89.259(f), the frequency chart is amended by deleting the frequencies 460.525 and 460.550 MHz, paragraph (g)(11) is amended and (g)(13) is deleted. The amended text reads as follows:

§ 89.259 Frequencies available to the Local Government Radio Service.

* * * * * * *

(f) * * *

Frequency or band	Class of station(s)	Limitations
*	* * * * * *	*
458.975	do	4, 5, 7
470-512	Base and Mobile	12
*	* * * * * *	*

(g) * * *

(11) Available for the class of stations designated for communications related to safety on highways in accordance with the provisions of § 89.102 (b). Those frequencies utilized for transmissions from highway call box installations are also available for medical services mobile station operations in the Special Emergency Radio Service. (See § 89.525(b)(11).)

* * * * * * *

3. In § 89.359, the frequency chart in (f) is amended by deletion of the frequencies 460.525, 460.550, 465.525 and 465.550 MHz, and in (g), subparagraph 10 is deleted and shown as reserved. The chart as amended reads as follows:

§ 89.359 Frequencies available to the Fire Radio Service.

* * * * * * *

(f) * * *

Frequency or band	Class of station(s)	Limitations
*	* * * * * *	*
458.950	do	2, 4
460.575	Base and Mobile	1, 2
460.600	do	1, 2
460.625	do	1, 2
465.575	Mobile only	1, 2, 4
*	* * * * * *	*

* * * * * * *

4. Subpart P. (§§ 89.501–89.525) is revised to read as follows:

SUBPART P—SPECIAL EMERGENCY RADIO SERVICE

Sec.

89.501 Availability of service.
89.503 Medical services.
89.505 Rescue organizations.
89.507 Veterinarians.
89.509 Disaster relief organizations.
89.511 School buses.
89.513 Beach patrols.
89.515 Establishments in isolated areas.
89.517 Communication standby facilities.
89.519 Emergency repair of public communications facilities.
89.521 Points of communication.
89.523 Station limitations.
89.525 Frequencies available to the Special Emergency Radio Service.

SUBPART P—SPECIAL EMERGENCY RADIO SERVICE

§ 89.501 Availability of service.

Special Emergency Radio Service is available only to the extent and for the purposes described in succeeding sections of this subpart. The eligibility requirements, classes of stations available to each eligible group, permissible communications in accordance with eligibility, and other applicable conditions of use are set forth as separate sections of this subpart.

§ 89.503 Medical services.

(a) *Eligibility.*—Licenses will be granted under this section only to the following described persons, and only for the purpose of conducting radio operations for the delivery or rendition of medical services to the public:

(1) Hospital establishments that offer services, facilities and beds for use beyond 24 hours in rendering medical treatment.

(2) Institutions and organizations regularly engaged in providing medical services through clinics, public health facilities, and similar establishments.

(3) Ambulance companies regularly engaged in providing medical ambulance services.

(4) Rescue organizations, to participate in activities for providing medical services.

(5) Associations comprised of two or more of the organizations eligible under subparagraphs (1), (2), (3) and (4) of this paragraph, for the purpose of coordination of the medical services communication activities of such organizations.

(6) Physicians, schools of medicine, and oral surgeons, which may include an association of physicians or oral surgeons in a locality (such as a county, city, or metropolitan area), which is chartered by a national, State, or regional association of physicians or oral surgeons, provided that such association shall be subject fully to the provisions of § 89.13 governing the cooperative use of radio stations in the mobile service, and provided further, that stations authorized to such associations must be used only for messages related to the medical activities of its members.

(7) Governmental entities and agencies for providing or coordinating medical services communication activities.

(b) *Eligibility Showing.*—Initial applications under this section shall be accompanied by a statement describing the basis of the applicant's eligibility for licensing and the nature and extent of the proposed medical services radio operations. In the event that applicant is participating in an area-wide medical communications plan which provides central dispatch of radio operations for two or more entities eligible for licensing under this section, the plan may be filed with the application. A listing of current plans will be made available upon request to applicants and other interested parties in connection with the development of radio communications systems for medical services. In addition, copies of plans will be maintained for public inspection in the license records of the Commission's Washington, D.C. offices.

(c) *Class and number of stations available.*

(1) The number and classes of stations which may be authorized will be dependent upon the frequencies selected and the demonstrated system requirements.

(2) Subject to the provisions of § 89.157, communication units of a mobile station authorized under this section may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordination is required for medical services activities.

(d) *Permissible communications.*—Except for test transmissions as permitted by § 89.151(e), stations may be used primarily for the transmission of messages necessary to rendition or delivery of medical services. On a secondary non-interference basis, stations may be used for the transmission of messages related to the efficient administration of organizations and facilities engaged in medical services operations.

§ 89.505 Rescue organizations.

(a) *Eligibility.*—Persons or organizations operating a rescue squad are eligibile in this service.

(b) *Eligibility Showing.* The initial application from a person or organization operating a rescue squad shall be accompanied by a statement describing the radio communication facilities desired and indicating how they would be used to enhance the safety of human life in the service being rendered. The statements also shall indicate the number of vehicles actually engaged in the emergency operation.

(c) *Class and number of stations available.* Each rescue squad normally may be authorized to operate not more than one base station and a number of mobile units, excluding mobile units of the hand or pack carried type, not in excess of the number of vehicles actually engaged in the emergency operation. Mobile units of the hand carried or pack carried type may be authorized to an extent not to exceed two such units for each radio equipped rescue squad vehicle. Additional base stations or mobile units will be au-

thorized only in exceptional circumstances when the applicant can show a specific need therefor.

(d) *Permissible communications.* Except for test transmissions as permitted by § 89.151(e), stations licensed to rescue squads may be used only for the transmission of messages pertaining to the safety of life or property and urgent messages necessary for the rendition of an efficient emergency rescue service.

§ 89.507 Veterinarians.

(a) *Eligibility.*—A veterinarian or a school of veterinary medicine is eligible under this section.

(b) *Eligibility Showing.* The initial applications of persons eligible under this section shall include a statement in sufficient detail to permit a determination of the applicant's eligibility.

(c) *Class and number of stations available.* Each veterinarian or school of veterinary medicine may normally be authorized to operate one base station and two mobile units. Additional base stations or mobile units will be authorized only in exceptional circumstances.

(d) *Permissible communications.* Except for test transmissions permitted by § 89.151, stations authorized under this section may be used only for the transmission of messages pertaining to the safety of life or property and urgent messages relating to medical duties of the licensee.

§ 89.509 Disaster relief organizations.

(a) *Eligibility.* Organizations established for disaster relief purposes and which have an emergency communications plan involving the use of radio are eligible in this service.

(b) *Eligibility showing.* The initial application from a disaster relief organization shall be accompanied by a copy of the charter or other authority under which the organization was established and a copy of the communications plan with a full explanation as to how the requested radio facilities would be used under such plan and integrated into any other communication facilities which normally would be available to assist in the alleviation of the emergency condition.

(c) *Class and number of stations available.* Disaster relief organizations may be authorized to operate an unlimited number of base, mobile and fixed stations.

(d) *Permissible communications.* Except for transmissions which are necessary for drills and tests as permitted by § 89.151(e), stations licensed to disaster relief organizations may be used only for the transmission of communications relating to the safety of life or property, the establishment and maintenance of temporary relief facilities, and the alleviation of the emergency situation during periods of actual or impending emergency, or disaster, and until substantially normal conditions are restored.

§ 89.511 School buses.

(a) *Eligibility.* Persons or organizations operating school buses on a regular basis over regular routes are eligible in this service.

(b) *Eligibility showing.* The initial application from a person or organization operating a school bus service shall be accompanied by a statement describing the radio communication facilities desired. The statement shall also indicate the school or schools being served and describe the area in which the service is operated. If the applicant is not a government subdivision the statement shall indicate the authority under which the school buses are being operated and the tenure of any contractual agreement in effect.

(c) *Class and number of stations available.* Each school bus operator normally may be authorized to operate not more than one base station and a number of mobile units not in excess of the total of the number of buses and maintenance vehicles regularly engaged in the school bus operation. Additional base stations or mobile units will be authorized only in exceptional circumstances when the applicant can show a specific need therefor.

(d) *Permissible communications.* Stations licensed to school bus operators may be used to transmit messages pertaining to either the efficient operation of the school bus service or the safety and general welfare of the students they are engaged in transporting.

§ 89.513 Beach patrols.

(a) *Eligibility.* Persons or organizations operating beach patrols having responsibility for life-saving activities are eligible in this service.

(b) *Eligibility showing.* The initial application from a person or organization operating a beach patrol shall be accompanied by a statement describing the radio communication facilities desired and the area served by the beach patrol. The statement shall also clearly indicate the proposed method of operation and the number and classes of stations required.

(c) *Class and number of stations available.* Eligibles in this category will be authorized to operate base, mobile, and fixed stations in the stated area served by the beach patrol. The number of such stations requested shall be fully justified in the eligibility showing.

(d) *Permissible communications.* Except for test transmissions as permitted by § 89.151(e) stations licensed to persons or organizations operating beach patrols may be used only for the transmission of messages pertaining to the safety of life or property.

§ 89.515 Establishments in isolated areas.

(a) *Eligiblity.* Persons or organizations maintaining establishments in isolated areas where public communication facilities are not available and where the use of radio is the only feasible means of establishing communication with a center of population, or other point from which emergency assistance might be obtained if needed, are eligible in this service.

(b) *Eligibility showing.* The initial application requesting a station authorization for an establishment in an isolated area shall be accompanied by a statement describing the radio communication facilities desired, the applicant's need therefor, and the proposed method of operation, including the location, class of station and name of licensee of the station with which communication is requested. The statement shall also describe the status of public communication facilities in the area of the applicant's establishment and indicate the results of any attempts the applicant may have made to obtain public communication service. In the event radio communications service is to be furnished the proposed station by another station which is not licensed to the applicant, a statement shall be submitted from the licensee of the station involved indicating that the proposed service will be rendered.

(c) *Class and number of stations available.* Persons or organizations in this category may be authorized to operate not more than one fixed station at any isolated establishment and in addition not more than one fixed station in a center of population.

(d) *Permissible communications.* Except for test transmissions as permitted by § 89.151(e), stations licensed for use at establishments in isolated areas may be used only during an actual or impending emergency endangering life, health or property for the transmission of essential communications arising from the emergency. The transmission of routine or non-emergency communications is strictly prohibited.

(e) *Communication service rendered and received.* (1) The licensee of a fixed station at an establishment in an isolated area shall make the communication facilities of such station available at no charge to any person desiring the transmission of any communication permitted by paragraph (d) of this section.

(2) For the purpose of providing the communications link desired the licensee of a fixed station at an establishment in an isolated area either may be the licensee of a similar station at another location or may obtain communication service under a mutual agreement from the licensee of any station in the Public Safety Radio Services or any other station which is authorized to communicate with the special emergency fixed station.

§ 89.517 Communication standby facilities.

(a) *Eligibility.* Persons or organizations operating communication circuits are eligible for standby radio facilities in this service: *Provided,* That the applicant can qualify under either of the following conditions:

(1) The applicant is a communications common carrier.

(2) The applicant is a person or organization operating communications circuits which normally carry essential communications of such a nature that any disruption thereof will endanger life or public property.

(b) *Eligibility showing.* The initial application from an eligible in this category proposing to operate a radio standby facility for other normal communication circuits shall be accompanied by a statement describing the radio communication facilities desired and the proposed method of operation. When appropriate, the statement shall include a description of the messages normally being carried and explain how a disruption thereof will endanger life or public property.

(c) *Class and number of stations available.* Eligibles in this category may be authorized to operate an unlimited number of fixed stations as standby radio facilities. Any such fixed station may be licensed for operation either at a specified location or at any temporary location within a specified area. In the latter case the area of desired operation must be specified by the applicant.

(d) *Permissible communications.* Except for test transmission as permitted by § 89.151(e), stations licensed for communication circuit standby facilities may be used only during periods when the normal circuits are inoperative due to circumstances beyond the control of the user. During such periods the radio facilities may be used to transmit any communication which would normally be carried by the regular circuits.

§ 89.519 Emergency repair of public communications facilities.

(a) *Eligibility.* Communications common carriers are eligible in this service for radio facilities to be used in effecting expeditious repairs to interruptions of public communications facilities where such interruptions have resulted in disabling intercity circuits or service to a multiplicity of subscribers in a general area.

(b) *Eligibility showing.* The initial application from a communications common carrier under the provisions of this section shall be accompanied by a statement describing the radio communications facilities desired and the proposed method of use under such emergency conditions as the applicant expects to arise. The statement shall also clearly indicate the number and classes of stations required in the proposed operation.

(c) *Class and number of stations available.* Eligibles in this category may be authorized to operate base, mobile and fixed stations. The number of such stations requested shall be fully justified in the eligibility showing.

(d) *Permissible communications.* Except for test transmissions as permitted by § 89.519(e) stations authorized under the eligibility provisions of this section may be used only, when no other means of communication is readily available, for the transmission of messages relating to the safety of life and property and messages which are necessary for the efficient restoration of the public communication facilities which have been disrupted.

§ 89.521 Points of communication.

(a) Special emergency base stations are primarily authorized to intercommunicate with special emergency mobile stations. Special emergency mobile stations are primarily authorized to intercommunicate with base and other special emergency mobile stations.

(b) Special emergency base and mobile stations are secondarily authorized to intercommunicate with other stations in the Public Safety Radio Services and to transmit to receivers at fixed locations: *Provided,* That no harmful interference will be caused to the service of any station transmitting to a point of communication for which that station is primarily authorized.

(c) Special emergency fixed stations are authorized to intercommunicate with other stations in the Public Safety Radio Services and to transmit to receivers at fixed locations. Such stations are also authorized to intercommunicate with any other station which is authorized to communicate with the special emergency fixed station.

§ 89.523 Station limitations.

(a) Mobile relay stations will not be authorized in the Special Emergency Radio Service on frequencies below 450 MHz, except that cross-banded mobile relay operations will be permitted as required for coordination between very high frequency (VHF) and ultra high frequency (UHF) systems.

(b) Except for fixed stations operating on frequencies assigned under the provisions of limitation note 9 of § 89.525(f), each operator of a station in

the Special Emergency Radio Service shall listen on the licensed frequency of the station prior to transmitting and shall not transmit until it has been reasonably determined that harmful interference will not be caused to any authorized communication in progress on the frequency.

(c) Where a radio station authorization in the Special Emergency Radio Service is held by a person or organization engaging in activities beyond the scope of those indicated in the eligibility provisions of this service the operation of such station shall be strictly confined to those activities on which the eligibility was established except for messages relating to the safety of life.

(d) Effective August 15, 1974, paging operations may be authorized in the Special Emergency Radio Services only on frequencies assigned under the provisions of limitation note 12 of § 89.525(f). Paging operations on other frequencies, authorized prior to August 15, 1974, may be continued for the balance of the license term then effective. In addition, such operation may be renewed for one additional five-year license term subject to the condition that harmful interference is not caused to regularly authorized operations in the Special Emergency Radio Service.

§ 89.525 Frequencies available to the Special Emergency Radio Service.

(a) The frequencies or bands of frequencies listed herein are available for assignment to stations in the Special Emergency Radio Service subject to the conditions and limitations of this section.

(b) The amount of separation between assignable frequencies listed in this section does not necessarily indicate the amount of frequency separation required for systems operation; accordingly, grants of adjacent channel assignments in all bands shall be in the discretion of the Commission.

(c) The operation of mobile systems in the Special Emergency Radio Service on frequencies below 450 MHz will normally be limited to only one frequency, except that (1) an additional frequency may be assigned for paging operations from those frequencies available in accordance with paragraph (f)(12) of this section; (2) an additional frequency may be assigned for mobile-repeater operations from those frequencies available in accordance with paragraph (f)(14) of this section; and (3) the frequency 155.340 MHz may be assigned as an additional frequency when it is designated as a mutual assistance frequency as provided in paragraph (f)(18) of this section.

(d) Frequencies indicated normally for base and mobile stations in the Special Emergency Radio Service will be authorized to fixed stations also subject to the condition that harmful interference will not be caused to the mobile service.

(e) The following tabulation indicates the frequency or bands of frequencies, the class of station(s) to which they are normally available, and the specific assignment limitations, which are developed in paragraph (f) of this section:

Frequency or band	Class of station(s)	Limitations
kHz		
2000 to 3000	Fixed	9
2726	Base and mobile	10
3201	do	
MHz		
33.02	do	6
33.04	do	
33.06	do	6
33.08	do	
33.10	do	6
35.64	Base	12, 13
35.68	do	12, 13
37.90	Base and mobile	6
37.94	do	6
37.98	do	6
43.64	Base	12
43.68	do	12
45.92	Base and mobile	15
45.96	do	15
46.00	do	15
46.04	do	15
47.42	do	7

Frequency or band	Class of station(s)	Limitations
MHz		
47.46	Base and mobile	
47.50	do	
47.54	do	
47.58	do	
47.62	do	
47.66	do	
72.00 to 76.00	Operational fixed	3
150.775	Mobile only	14
150.790	do	14
152.0075	Base	12
155.160	Base and mobile	15
155.175	do	16
155.205	do	16
155.220	do	15
155.235	do	16
155.265	do	16
155.280	do	15
155.295	do	16
155.325	do	16, 17
155.340	do	15, 18
155.355	do	16, 17
155.385	do	16, 17
155.400	do	15, 17
157.450	Base	12, 21
162.6625	do	12
458.025	Mobile only	1, 11, 20
458.075	do	1, 11, 20
458.125	do	1, 11, 20
458.175	do	1, 11, 20
460.525	Base and Mobile	1, 2, 8
460.550	do	1, 2, 8
463.000	do	1, 2, 4
463.025	do	1, 2, 4
463.050	do	1, 2, 4
463.075	do	1, 2, 19, 20
463.100	do	1, 2, 19, 20
463.125	do	1, 2, 19, 20
463.150	do	1, 2, 19, 20
463.175	do	1, 2, 19, 20
465.525	Mobile only	1, 2, 8
465.550	do	1, 2, 8
468.000	do	1, 2, 5, 20
468.025	do	1, 2, 5, 20
468.050	do	1, 2, 5, 20
468.075	do	1, 2, 19, 20
468.100	do	1, 2, 19, 20
468.125	do	1, 2, 19, 20
468.150	do	1, 2, 19, 20
468.175	do	1, 2, 19, 20
(For frequencies 952 MHz and above, see § 89.101.)		

(f) Explanation of assignment limitations appearing in the frequency tabulation of paragraph (e) of this section:

(1) For two-frequency systems, separation between base and mobile transmit frequencies is 5 MHz.

(2) For radio systems first authorized after August 1, 1974, the base-mobile frequencies 460.525, 460.550, 463.000, 463.025, 463.050, 463.075, 463.100, 463.125, 463.150, 463.175 MHz; and the mobile-only frequencies 465.525, 465.550, 468.000, 468.025, 468.050, 468.075, 468.100, 468.125, 468.150, 468.175 MHz will be assigned in a block for shared operations under § 89.503(a). Licensees operating on the paired 463/468 MHz frequencies in this block must utilize equipment that is type-accepted for eight-channel capacity, i.e., capability for all respective transmit or receive frequencies in either the 463 or 468 MHz band.

(3) The frequencies available in the band 72 to 76 MHz are listed in § 89.101(c). These frequencies, which are shared with other services, are available only in accordance with the provisions of § 89.101.

(4) This frequency is primarily authorized for use under § 89.503(a), for communications from physicians and hospitals to medical care vehicles and personnel equipped with bio-medical telemetry capability to furnish instructions for patients' care. On a secondary basis, subject to non-interference to

the foregoing types of operations, this frequency may be utilized for any other permissible communications consistent with § 89.503(d).

(5) This frequency is primarily authorized for use under § 89.503(a), for operation of mobile bio-medical telemetry units in ambulances and other medical-care vehicles, or when hand-carried by medical personnel. For these purposes, F2, F3, and F9 emissions may be authorized. On a secondary basis, subject to non-interference to regular telemetry operations, this frequency may be utilized for any other permissible communications consistent with § 89.503(d).

(6) This frequency is shared with the Highway Maintenance Radio Service.

(7) This frequency is reserved for assignment only to National organizations established for disaster relief purposes.

(8) This frequency is authorized for use under § 89.503(a) in the dispatch of medical-care vehicles and personnel for the rendition or delivery of medical services. Central-dispatch operations serving multi-system requirements in an area-wide medical radio communications plan is authorized and may include the designation of this frequency for intra-system and inter-system mutual assistance purposes.

(9) Appropriate frequencies in the band 2000–3000 kilohertz which are designated in Part 83 of this chapter as available to Public Ship Stations for telephone communication with Public Coast Stations may be assigned on a secondary basis to special emergency fixed stations for communication with Public Coast Stations only, provided such stations are located in the United States and the following conditions are met:

(i) That such fixed station is established pursuant to the eligibility provisions of § 89.515 and that the isolated area involved is an island or other location not more than 300 statute miles removed from the desired point of communication and isolated from that point by water.

(ii) That evidence is submitted showing that an arrangement has been made with the coast station licensee for the handling of emergency communications permitted by § 81.302(b) of this chapter and § 89.515(d).

(iii) That operation of the special emergency fixed station shall at no time conflict with any provision of Part 83 of this chapter and further, that such operation in general shall conform to the practices employed by Public Ship Stations for radiotelephone communication with the same Public Coast Station.

(10) This frequency is shared with the State Guard Radio Service.

(11) This frequency is authorized for use under § 89.503(a) for telemetry or voice transmission with maximum transmitter output power of 1 watt from a portable telemetering unit to an ambulance for automatic retransmission (mobile-repeater) from a patient to a hospital or other medical care facility. This frequency is also available in the Local Government Radio Service for highway radio call box operations. (See § 89.259 (f) and (g) (11).)

(12) This frequency will be assigned only for one-way paging communications to mobile receivers. Transmissions for the purpose of activating or controlling remote objects on this frequency are not authorized.

(13) Prior to October 1, 1974, no assignments will be made on the frequency 35.64 MHz within 40 miles of the center of Houston, Texas, Portland, Maine, Charleston, West Virginia, Boston, Massachusetts, and Binghamton, New York; or on 35.68 MHz within 40 miles of the center of Portland, Maine, Boston, Massachusetts, Binghamton, New York, and Charleston, West Virginia. The centers of cities are taken as the reference points indicated on pages 226–238 of the U.S. Department of Commerce publication "Air-Line Distances Between Cities in the United States."

(14) This frequency may be authorized for voice transmission from a portable (hand carried) unit to an ambulance or other emergency vehicle for automatic retransmission (mobile-repeater) on a regular mobile frequency to a base station facility. Operations on this frequency are limited to five watts output power.

(15) Available for assignment: *Provided*, That until further order of the Commission, application is accompanied by a written and signed statement

that licensees of all stations, excluding Special Emergency stations, located within a radius of 75 miles of the proposed location and authorized to operate on a frequency 30 kHz or less removed have concurred with such assignment, or is accompanied by an acceptable engineering report indicating that harmful interference to the operation of such existing stations will not be caused.

(16) Available for developmental operation: *Provided*, That

(i) The proposed station location is removed by at least 40 miles from the station location of each other station, not including those authorized to other Special Emergency licensees, which is authorized to operate on frequencies 30 kHz or less removed; and

(ii) The application is accompanied by a written and signed statement that the licensees of all stations, excluding Special Emergency licensees located within a radius of 75 miles of the proposed location and authorized to operate on a frequency 30 kHz or less removed have concurred with such assignment or is accompanied by an acceptable engineering report indicating that harmful interference to the operation of existing stations, excluding Special Emergency stations, will not be caused, together with a written statement that the licensees of all stations, excluding Special Emergency stations, located within a radius of 75 miles of the proposed station and authorized to operate on frequencies 30 kHz or less removed have been notified of the applicant's intention to request the assignment.

(17) This frequency is assignable only to those hospitals as described in § 89.503(a)(1), and to those ambulances which submit a showing that they render coordination and cooperation with a hospital authorized on this frequency.

(18) This frequency is authorized for use under § 89.503(a) for the rendition and delivery of medical services, and may be designated by common consent as an inter-system mutual assistance frequency under an area-wide medical communications plan.

(19) This frequency is primarily authorized for use under § 89.503(a) for communications between medical facilities, vehicles, and personnel related to supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. On a secondary basis, subject to noninterference to the foregoing types of operations, this frequency may be utilized for any other permissible communications consistent with § 89.503, including bio-medical telemetry transmission.

(20) The continuous carrier mode of operation is authorized for use of telemetry emission on this frequency.

(21) Operations on this frequency are limited to 30 watts transmitter output power.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
MASSACHUSETTS BLACK CAUCUS
Concerning the Fairness Doctrine Involving Station WCVB–TV, Boston, Mass.

JUNE 27, 1974.

Honorable ROYAL L. BOLLING, DORIS BUNTE, MELVIN H. KING, ROYAL L. BOLLING, JR., AND BILL OWENS
Massachusetts Black Caucus,
House of Representatives,
State House,
Boston, Massachusetts 02133

DEAR REPRESENTATIVES: This is in reference to your letter to Commissioner Benjamin Hooks, which was referred to this office on June 14, 1974, wherein you make a complaint against station WCVB–TV, Boston, Massachusetts. You state that in 1965 the Massachusetts Legislature enacted the Racial Imbalance Law, "a law requiring the desegregation of the public schools in Massachusetts"; that the Massachusetts Department of Education has forced Boston, under court order, "to accept a plan which it [Massachusetts Department of Education] drew up in 1973 for desegregation of Boston Public Schools"; that the plan is to go into effect in September 1974 amid considerable controversy; that WCVB–TV, "between the period April 8–15, 1974 ran 4 two minute editorials a total of 24 times urging that the Racial Imbalance Law be 'modified' (in some unspecified way) and that the Court-ordered racial desegregation plan for Boston *not be implemented*"; that you "feel this is the height of editorial irresponsibility, especially since no concrete solutions were offered as alternatives"; that "in response to its editorials, it allowed 4 two minute responses (by different people), a total of 16 times, and would not allow the same person to respond to each of the editorials"; and that "[i]n no sense, in . . . [your] view, does this either conform to the equal time provision or the fairness doctrine."

You further state that "members of the Massachusetts Black Caucus met with the Management of WCVB in order to . . . try to point out to them the serious negligence and irresponsibility which . . . [you] felt their editorial position represented"; that this meeting was "wholly unsatisfactory"; and that WCVB–TV "needs a strong reminder of its obligation to take responsible editorial positions . . . and that it must grant equal editorial time to allow those with a different viewpoint to respond."

The Commission is prohibited by Section 326 of the Communications Act from censoring broadcast matter, and it does not attempt

to direct broadcasters in the selection or presentation of specific programming.

However, under the fairness doctrine, if a station presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contrasting views. This policy does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. Licensees are afforded considerable discretion in deciding what issues are controversial issues of public importance and in selecting the format and spokesmen for and the placement and duration of contrasting viewpoints. The Commission will review complaints only to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Where complaint is made to the Commission, the Commission expects a complainant to submit specific information including: (1) reasonable grounds for the claim that the station or network broadcast only one side of the issue in its overall programming; (2) copies of correspondence between the complainant and the station or network; and (3) whether the station or network has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue.

As stated above, the fairness doctrine does not require exact numerical equality in the amount of time devoted to each viewpoint on any particular issue, but "that in the circumstances there has been 'reasonable opportunity for the discussion of conflicting viewpoints . . .'" *Committee for the Fair Broadcasting of Controversial Issues*, 25 FCC 2d 283 (1970).

From the information before the Commission, it cannot be concluded that WCVB–TV has failed to afford a reasonable opportunity in its overall programming for the presentation of contrasting viewpoints on the issue about which you are concerned. The broadcast of "4 two minute responses . . . a total of 16 times" in reply to "4 two minute editorials, [broadcast] a total of 24 times" does not appear to have been an unreasonable effort by the licensee to fulfill its fairness doctrine obligations on that issue.

In view of the above, no further Commission action is warranted on your complaint.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division
for Chief, Broadcast Bureau.

109-001—74——5

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
STOP ERA COMMITTEE
Concerning the Fairness Doctrine involving WPVI–TV, Philadelphia, Pa.

JUNE 27, 1974.

MRS. JOHN F. BARRETT,
Chairman,
STOP ERA Committee,
552 Crescent Avenue,
Glenside, Pennsylvania 19038

DEAR MRS. BARRETT: This is in reference to your letter to the Commission dated May 10, 1974, wherein you make a complaint against station WPVI–TV, Philadelphia, Pennsylvania. You stated that in December 1973 you wrote to WPVI–TV about a program sponsored by the League of Women Voters broadcast on November 25, 1974 "where a panel of women discussed the benefits of the proposed Equal Rights Amendment"; that all of the women "were proponents of the ERA"; that you "requested an opportunity to present a panel of women from . . . [your] STOP ERA organization"; that you have not received a reply from WPVI–TV, but you had been sent a letter by a representative of the League of Women Voters who invited you "and one or two other women from STOP ERA to participate in a 'debate' on the ERA"; and that your response to this letter, a copy of which was enclosed in your complaint, was directed to WPVI–TV.

In your letter to WPVI–TV you stated that your previous letter to WPVI–TV had been answered by the League of Women Voters, who had invited you and some representatives of STOP ERA "to participate in a 'debate' on a program sponsored by the league"; that it was your understanding that, under the fairness doctrine "it is not the responsibility or obligation of a sponsoring organization to present the other side of a controversial issue", but that it was WPVI–TV's "obligation to give a fair presentation of the opposing viewpoint"; that, in your opinion, "the proposed debate on the ERA does not fulfill the spirit or intent of the Fairness Doctrine"; and that WPVI–TV should give your organization "time to fully discuss the disastrous ramifications of the Amendment" before you will participate in a debate on the issue.

The Commission is prohibited by Section 326 of the Communications Act from censoring broadcast matter, and it does not attempt to

direct broadcasters in the selection or presentation of specific programming.

However, under the fairness doctrine, if a station presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contracting views. This policy does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, no particular broadcast must be specifically balanced by another broadcast, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

Where complaint is made to the Commission, the Commission expects a complainant to submit specific information including: (1) the basis for the claim that the issue was a controversial issue of public importance; (2) reasonable grounds for the claim that the station broadcast only one side of the issue in its overall programming; (3) copies of correspondence between the complainant and the station; and (4) whether the station has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue.

As the United States Court of Appeals for the District of Columbia Circuit has stated:

> On a complaint under the fairness doctrine, the burden is not only on the complainant to define the issue, but also to allege and point specifically to an unfairness and imbalance in the programming of the licensee devoted to this issue. It is not enough for the complainant to allege that there is a controversial issue of public importance on which the complainant wants to be heard on the licensee's station. The essential element in invoking the fairness doctrine is that the licensee has not hitherto provided fair and balanced programming on this particular issue, and therefore, and only therefore, can the complainant assert a right for someone to be heard to rectify the existing imbalance. *Healey* v. *FCC*, 460 F. 2d 917, 921 (D.C. Cir. 1972).

While the Equal Rights Amendment may be a controversial issue of public importance, on the basis of the information before the Commission it cannot be concluded that WPVI–TV has failed to afford reasonable opportunity in its overall programming for the presenta-

tion of contrasting viewpoints. Should you supply such information further consideration will be given to your complaint.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
DONALD W. DAVIS
Concerning the Fairness Doctrine involving Station KWTV, Oklahoma City, Okla.

JUNE 27, 1974.

DONALD W. DAVIS, Esq.,
3718 North Kelly Avenue,
Oklahoma City, Oklahoma 73111

DEAR MR. DAVIS: This is in reference to your complaint against station KWTV, Oklahoma City, Oklahoma, filed with the Commission on June 10, 1974. You state that you are an announced candidate for County Commissioner of District 1 of Oklahoma County, Oklahoma; that KWTV refused to grant you "equal time to reply to a statement made by the incumbent County Commissioner for District 1 . . . who is also an announced candidate for the office he currently holds"; that the incumbent County Commissioner appeared on KWTV on May 28, 1974 on the 6:00 p.m. and 10:00 p.m. news programs and contradicted a prior public statement made by you; and that you requested "equal time . . . without success."

We are enclosing for your information copies of the Commission's Public Notices of August 7, 1970 and March 16, 1972, entitled "Use of Broadcast Facilities by Candidates for Public Office." These documents contain the provisions of Section 315 of the Communications Act, amendments enacted by the Congress, the Commission's rules, regulations and guidelines promulgated thereunder, and representative rulings and interpretations. This material should serve to inform you, generally, as to the applicability and requisites of Section 315 in given situations.

As you are aware, if a licensee permits any person who is a legally qualified candidate for any public office to use a broadcasting station, he must afford "equal opportunities" to all other such candidates for that office in the use of such broadcasting station. If a legally qualified candidate appeared on a bona fide newscast, bona fide news interview, bona fide documentary, or on-the-spot coverage of a bona fide news event, such an appearance would not be deemed a use of a broadcasting station for purposes of Section 315.

Since you state that the appearances of your opponent for which you seek "equal opportunities" took place during two newscasts, such appearances apparently would come within the bona fide newscast exception described above and in the enclosed materials. Under these

circumstances, you would not be entitled to "equal opportunities" under Section 315.

Accordingly, no further action is warranted on your complaint.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint of
HANK APPLETON ET AL.
Concerning the Fairness Doctrine involving Station KHSU–FM, Arcata, Calif.

JUNE 27, 1974.

MR. HANK APPLETON
71 East 7th Street,
Arcata, California 95521

DEAR MR. APPLETON: This is in reference to the letters to the Commission dated May 20 and 21, 1974 from you and Messrs. Dick Wild, Bill Ralston and Clyde Johnson. In your letter of May 20 you state that in the early morning hours of March 3, 1974 radio station KHSU–FM, Arcata, California, broadcast a tape of a fictional interview with the six candidates for city council; that the six candidates did not actually appear in the interview, but that the names given to the interviewees were "barely" disguised; that "four of the six candidates for council were ridiculed and their issues were smeared"; that two of the candidates "had their views stated correctly" and "were subsequently endorsed"; and that, while "political candidates are subject to some forms of political satire" you feel that "this broadcast crossed far beyond these limits and in fact went far beyond legality." You did not indicate in what way the broadcast "went far beyond legality." In your letter of May 21, 1974, you enclosed a tape of the broadcast and copies of letters, newspaper clippings, broadcast editorial transcripts and petitions. The enclosures to your May 21 letter raise the issues relating to compliance by KHSU–FM with Section 399 of the Communications Act (proscription against endorsement of political candidates by noncommercial educational stations) and the Commission's policy and rules concerning personal attacks.

The Commission is also in receipt of a letter dated May 24, 1974, from Dr. Peter Coyne, Chairman of the Department of Speech Communication of California State University, Humboldt, licensee of KHSU–FM. Dr. Coyne stated that the tape forwarded to the Commission by you in your letter of May 21 was not broadcast in its entirety; that "the last portion of the tape endorsing two of the candidates was not transmitted over the air"; that all of the candidates were informed of that fact; that none of the candidates had ever contacted him in regard to your complaint or in response to KHSU–FM's offer of time to reply to the broadcast; and that all of the candidates had appeared on KHSU–FM prior to the March 3 broadcast.

Enclosed with Dr. Coyne's letter of May 24 was a copy of a letter from Dr. Coyne to Dr. John Pauley, Acting Vice President, Office of

Academic Affairs, California State University, Humboldt. In that letter Dr. Coyne stated that candidates "Chesbro and Hauser" were given more favorable treatment on the tape, but that "the final words on the tape, 'Vote for Chesley and Hauser', were not broadcast over the air"; that on Tuesday, March 5, 1974, election day, Michael Glimpse, manager of KHSU–FM, broadcast an apology and disclaimer of the broadcast approximately ten times; that Mr. Glimpse immediately offered candidates Appleton and Ralston an opportunity to respond over the air; that both Mr. Appleton and Mr. Ralston declined this offer; that on Saturday, March 9, a letter of apology indicating the date and time of the broadcast, and containing a tape recording of the program and an offer of a reasonable opportunity to respond, was delivered to all six candidates; that, as of March 26 none of the candidates had responded to the offer; that the student involved "violated the station's announced procedure of clearing all such programs with the radio station's manager"; that as a result of this incident the station's policy of requiring screening of material for broadcast was formalized from verbal to written instructions; and that the broadcast did not constitute an endorsement of Mr. Chesley or Mr. Hauser, since the last part of the tape containing the overt endorsement was not broadcast, and the remainder of the tape consisted of self-promoting statements by each of the "candidates" represented.

Section 399 of the Communications Act of 1934, as amended by the Public Broadcasting Act of 1967 (Public Law 90–129) states:

> No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for public office.

In construing and applying Section 399 the Commission must be guided by the legislative history and policy underlying the section. That legislative history indicates that Congress envisioned the role of noncommercial educational broadcasters as "a vital public affairs medium—bringing in depth many aspects of community and political life" (S. Rep. No. 91–167, 91st Cong., 1st Sess., p. 7 (1969)). The prohibition was understood to preclude only editorials or endorsements "representing the opinion of the management" of noncommercial broadcasting stations. (113 Cong. Rec. 15414 (1967)). The Broadcast Bureau has interpreted this proscription not to prohibit "the expression of views on public issues by employees of a noncommercial educational broadcast station in their capacity as individuals and on the same basis as other advocates, provided the surrounding facts and circumstances do not indicate that such views are represented or intended as the official opinion of the licensee or its management." *Accuracy in Media (WNET)*, 45 FCC 2d 297 (1974). The "surrounding facts and circumstances" of this case clearly indicate that this program was not represented or intended to be the official opinion of KHSU–FM. Not only was the program broadcast by the student without management clearance as required by station rules, but an apology and disclaimer were broadcast by KHSU–FM some ten times on election day, and written apologies were directed

to each candidate. You have submitted no information which would indicate that this program was represented or intended as the official opinion of the management or licensee of KHSU–FM. Under these circumstances it appears that the student who broadcast the tape was acting in his capacity as an individual advocate and therefore no violation of Section 399 is evident.

While the broadcast of which you complain may not be an endorsement within the meaning of Section 399, licensees are still responsible for all of the material broadcast over their wavelengths. Thus KHSU–FM would still be required to comply with the Commission's personal attack rules, if one were broadcast.

The Commission's personal attack rule states that when, during the presentation of views on a controversial issue of public importance, a licensee broadcasts an attack upon the honesty, character, integrity or like personal qualities of an identified person or group, it is the duty of the licensee to notify the person or group attacked, to send a transcript or as accurate a summary as possible, and to afford an opportunity for response. A copy of the personal attack rules is enclosed. Please note that mere mention of a person or group, or even certain types of unfavorable references thereto, does not constitute a personal attack, as defined in the Commission's Rules.

Without reaching the issues of whether the statements of which you complain were made during the discussion of a controversial issue of public importance or whether they constituted an attack on your honesty, character, integrity or like personal qualities, it is clear that KHSU–FM has complied with the requirements of the personal attack rule since KHSU–FM's letter of March 8, 1974, five days after the broadcast, contained notice of the broadcast, a tape of the broadcast, and an offer of an opportunity to reply over KHSU–FM's facilities.

It also appears from Dr. Coyne's correspondence that you did not communicate the substance of your complaint directly to KHSU–FM until the filing of your complaint with the Commission. The Commission always recommends that a complainant first contact the licensee to discuss the substance of the complaint and to give the licensee the opportunity to demonstrate compliance with Commission rules or to arrange some mutually agreeable solution. If, after contacting the licensee, a complainant is not satisfied that the licensee has fulfilled its obligations under the Communications Act or the Commission's rules and the Commission is so advised in factual detail as described above, the Commission will, in appropriate cases, request a statement from the licensee and provide the complainant with an opportunity to comment on the licensee's statement if the complainant so desires. Thereafter, on the basis of all available information, the Commission will attempt to determine whether the licensee's actions under the circumstances violated any rules or policies of the Commission.

In view of the foregoing it appears that no Commission action is warranted on your complaint.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Wash-

ington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

FCC 74-694

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
FIRST ILLINOIS CABLE TV, INC., SPRINGFIELD, ILL.	CAC-167 IL091
FIRST ILLINOIS CABLE TV, INC., LELAND GROVE, ILL.	CAC-168 IL111
FIRST ILLINOIS CABLE TV, INC., SOUTHERN VIEW, ILL.	CAC-169 IL112
FIRST ILLINOIS CABLE TV, INC., JEROME, ILL.	CAC-170 IL113
FIRST ILLINOIS CABLE TV, INC., GRANDVIEW, ILL.	CAC-171 IL114
For Certificates of Compliance	

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 8, 1974)

BY THE COMMISSION: COMMISSIONERS WILEY, CHAIRMAN; AND REID CONCURRING IN THE RESULT.

1. On March 18, 1974, Midwest Television, Inc., licensee of Television Broadcast Station WCIA, Champaign, Illinois, and Television Translator Station W49AA, Springfield, Illinois, filed a petition for reconsideration directed against the Commission's decision in *First Illinois Cable TV, Inc.*, FCC 74-125, 45 FCC 2d 304 (released February 4, 1974), which authorized the addition of Stations KPLR-TV (Ind., Channel 11), St. Louis, Missouri, and WGN-TV (Ind., Channel 9), Chicago, Illinois, to the above-captioned operating systems. Midwest Television petitions for reconsideration of that part of the Commission's decision which granted a waiver of the provisions of the leapfrogging rules, Section 76.63(a) as it relates to Section 76.61(b)(2)(i), to permit the carriage of Station WGN-TV (Channel 9), Chicago, Illinois.

2. In support of its petition Midwest argues: (a) the Commission did not consider the arguments made in Midwest Television's "Reply" to the original applications; (b) the Commission's decision in *Commission on Cable Television of the State of New York*, FCC 73-1148, 43 FCC 2d 826, decided during the pendency of First Illinois' applications and relied upon in the initial decision herein, is inapposite; and, (c) should the Commission determine upon reconsideration that the waiver was properly granted, Midwest requests that the Commission follow its decision in *Commission on Cable Television of the State of New York*, *supra*, and preclude the cable systems from employing Section 76.61(b)(2)(ii) to delete the very in-state programming for which the waiver was granted.

3. Midwest's arguments are ruled upon as follows: (a) (b) The arguments raised in Midwest's "Reply" concern the merits of granting a waiver of the leapfrogging rules. We have in our initial opinion considered and rejected these arguments, holding that unusual circumstances justified the grant of a waiver. Our initial decision was based upon two separate grounds: (1) The similarity of circumstances between the present case and our decision in *Commission on Cable Television of the State of New York*, in which a waiver was granted; and, (2) Upon a determination that the difference in distance between the second and third closest top-25 markets and the cable systems' communities is *de minimis*. Midwest has provided nothing that would cause us to depart from this determination; (c) We agree that to allow First Illinois Cable TV to delete programming of primarily local interest would defeat the purpose of the waiver. Accordingly, we will insert as a condition of our original decision that all the above-captioned cable systems refrain from deleting news and public affairs programs offered by WGN–TV. *See Commission on Cable Television of the State of New York, supra.*

4. On April 11, 1974, Plains Television Corporation, licensee of Television Broadcast Station WICS, filed "Comments" to be associated with the petition for reconsideration. The main thrust of this pleading is a demonstration of the similarities in local programming between WGN–TV and WICS to show that WICS adequately serves these communities. The comments conclude by requesting the Commission to rescind the waiver previously granted to First Illinois. Since Plains' comments request us to revisit a past decision, they must be viewed as a petition for reconsideration and therefore are untimely filed.[1] On procedural grounds alone, the comments are defective and could be rejected. Nonetheless, we have examined the merits to determine whether the public interest would be served if reconsideration were granted and our earlier decision set aside. We find that the comments filed by Plains Television merely compare the programming broadcast by WGN–TV and WICS and offer no new evidence to dispute the basis of our previous findings as outlined in paragraph 3 above. Accordingly, we must reject the petition.

In view of the foregoing, the Commission finds that a partial reconsideration of its action in First Illinois Cable TV, Inc., FCC 74–125, 45 FCC 2d 304, to the extent indicated above, is consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Petition for Reconsideration" filed March 18, 1974, by Midwest Television, Inc., IS GRANTED in part and DENIED in part and a certificate of compliance will be issued consistent with the restriction contained in paragraph 3 above.

IT IS FURTHER ORDERED, That "Comments of Plains Television Corporation" ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[1] Section 1.106(f) of the Rules provides, in pertinent part, that:
The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of release of the document containing the full text of the action taken or, in case such document is not released, after release of a public notice announcing the action in question, and shall be served upon parties to the proceeding . . .

FCC 74-674

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (MELBOURNE AND SATELLITE BEACH, FLA.)	Docket No. 19811 RM-2013 RM-2271

REPORT AND ORDER

(Proceeding Terminated)

(Adopted June 25, 1974; Released July 2, 1974)

By the Commission:

1. The Commission here considers conflicting proposals for the assignment of FM Channel 292A to either Melbourne or Satellite Beach and correspondingly amending the FM Table of Assignments (Section 73.202(b) of the Commission's Rules and Regulations). This proceeding was initiated by a Notice of Proposed Rule Making, adopted September 6, 1973, based on the petition of Radio Melbourne, Inc., (Radio Melbourne), licensee of AM Station WMEL,[1] seeking assignment of Channel 292A as a third assignment to Melbourne (FCC 73-912; 38 Fed. Reg. 26211). Beach Broadcasting (Beach filed a petition (and supplement thereto) proposing assignment of the same channel to Satellite Beach (as its first assignment) which has been accepted as a counterproposal.

2. Both Melbourne, population 40,236, and Satellite Beach, population 6,558, are located in Brevard County, population 230,006.[2] Brevard County is located in the east central portion of Florida. Satellite Beach is located on the east bank of the Indian River (Intercoastal Waterway) across from Melbourne. There are five aural broadcast services at Melbourne: FM Stations WYRL (Channel 272A) and WTAI-FM (Channel 296A), and AM Stations WTAI (daytime-only), WMEL, and WMMB. There are no aural broadcast facilities at Satellite Beach. The county, approximately 67.5 miles long, is the location of the Kennedy Air Space Center. The principal cities (in a north-south direction) are Titusville, population 30,515 (the county seat), Cocoa Beach, population 9,952, Cocoa, population 16,110, Rockledge, population 10,523, Satellite Beach, and Melbourne. In addition to the petitioners, also filing comments and reply comments are: the First

[1] By letter, dated May 8, 1974, Elyria-Lorain Broadcasting Co. (Elyria-Lorain) advised that it has agreed to purchase Radio Station WMEL from Radio Melbourne (BHPL-448); the agreement includes a three year no-competition covenant. Elyria-Lorain states that it supports the rule making proposal and it will apply for the channel if assigned.

[2] All population data are from the 1970 U.S. Census unless otherwise indicated.

Baptist Church of Melbourne (Church); Paul E. Sharpe; Broadcast Enterprises, Inc., licensee of Stations WMMB and WYRL (FM) at Melbourne (Broadcast Enterprises); and the National Association for Uniformed Services (NAUS). The Church and Sharpe favor assignment of Channel 292A to Melbourne while Broadcast Enterprises and NAUS oppose it.[3]

3. The Notice expressed a concern about the proposed assignment of Channel 292A to Melbourne because Oliver Broadcasting Company, licensee of daytime-only AM Station WIPC, Lake Wales, Florida, in informal comments opposed the petition because the asserted needs for nighttime service at Lake Wales and its intention to petition for reassignment of Channel 292A from Avon Park to Lake Wales (population 8,240). The latter issue is not before us, since neither Oliver Broadcasting nor anyone else petitioned for such a change.[4] Thus, our present concerns are the arguments as between Radio Melbourne and Broadcast Enterprises and Beach.

4. We first discuss Radio Melbourne's contentions. Radio Melbourne variously argues that a third assignment is merited on the basis of a 236% increase in Melbourne's population between 1960 and 1970, a 106% increase in population of Brevard County, and the small amount of local programming over Stations WTAI–FM (easy listening) and WYRL(FM) (country and western music format). Radio Melbourne urges that Beach's petition is unnecessary and superfluous, inasmuch as Beach could apply for the channel for use at Satellite Beach under the 10-mile rule (Section 73.203(b)) if Channel 292A is assigned to Melbourne while if the channel is assigned to Satellite Beach one may not similarly apply for its use at Melbourne.[5] Radio Melbourne finds fault with Beach because it does not state that it will apply for the channel if the assignment is made to Satellite Beach and construct a station if the application is granted. It also states that Beach has failed to show that Satellite Beach is self-sufficient and has a complement of local services, local organizations and local sources of revenue. Radio Melbourne alleges that Satellite Beach has no water or utility system of its own (these we are told are supplied from Melbourne) that whatever land is developed in Satellite Beach is devoted to homes, and that Beach's claim of population growth during the tourist season is a glib assertion in view of the fact that there is only a single motel in Satellite Beach. Radio Melbourne says that Satellite Beach is a primarily residential area in an urban complex in "south" Brevard County and that the area's businesses are located in the larger cities (Melbourne, Cocoa Beach, Cocoa, Rockledge, Palm Bay (population 7,176) and

[3] NAUS' main objection is primarily directed at Radio Melbourne's action in a specific instance. This is not of decisional consequence, since the channel, if assigned, may be applied for by any party. Also, as noted, Radio Melbourne has agreed to dispose of Station WMEL (see footnote 1).

[4] We do not consider assignments to cities of less than 10,000 population unless there is an expressed demand.

[5] The Notice, in discussing preclusion to four communities if Channel 292A is assigned to Melbourne, mentioned that three of the four are contiguous to Melbourne and an applicant from any of those communities could apply for use of Melbourne Channel 292A under the "10-mile" rule (Section 73.203(b)). One of these three is Satellite Beach. The other two are Indialantic (population 2,685) and Indian Harbour (population 5,371). The fourth precluded community is Vero Beach, population 11,908, which already has Channels 228A and 288A assigned to it (see Report and Order in Docket No. 19772, adopted May 22, 1974 (FCC 74–532), — F.C.C. — 2d).

Titusville) all of which except Rockledge and Palm Bay have FM channel assignments.[6] Radio Melbourne argues that because of Satellite Beach's location across the Indian River from Melbourne, a station at Satellite Beach clearly would depend on Melbourne for advertising revenue. In short, Radio Melbourne avers that the Commission should not assign a channel to Satellite Beach on the basis of sketchy information, especially when the proposals are not truly mutually exclusive. In the latter respect, the contention is that if Channel 292A is assigned to Melbourne, one may apply for a station at Satellite Beach or for one of the other communities in various directions under the provisions of Section 73.203(b) while because of the isolated location of Satellite Beach assignment to it would not permit the same sort of flexibility.

5. Broadcast Enterprises, licensee of Stations WMMB and WYRL (FM), opposes the assignment of another channel to Melbourne. Firstly, it argues that such an assignment is violative of the population criteria which would assign 1 or 2 channels to communities of less than 50,000 population.[7] It points out that the purported 236% growth figure for Melbourne between 1960 and 1970 is artificial in view of the fact that Melbourne and Eau Gallie merged in 1969 and that their total 1960 population was 24,282, so that the actual population increase is only 65.7%, significantly less than the 106% growth figure for the county and in contrast to the 117.4% for Vero Beach and Vero Beach South, which it claims merits a first competitive FM service.[8] Broadcast Enterprises also argues that Melbourne cannot support another aural broadcast station; reference is made to the AM–FM financial data for 1971 showing a total broadcast loss of $6,072 for the Melbourne market (the figures for 1972 show a profit of $1,279 for the five stations and for 1973 there is a loss of about $8,500). It is also argued that between 1960 and 1970 the number of broadcast services in Melbourne have outpaced growth by a ratio of 2.5 (2 stations to 5 stations), while the population growth was only 65.7% and the county's radio station growth is 130% (from 7 to 16 stations). Broadcast Enterprises contends that it would be arbitrary, capricious, and contrary to the public interest to aggravate the economic situation and diminish the program service of those stations currently serving the community, a situation which is exacerbated by the large-scale cutbacks at the Kennedy Space Flight Center.

6. Radio Melbourne and Broadcast Enterprises also filed reply comments. Radio Melbourne says that there has been a substantial population increase for both Melbourne and Brevard County since 1970 (11.9% and 11% respectively), and, thus, it argues that Melbourne in a few years will have the 50,000 population within its city limits. As to the contentions about the economics of the radio market, it is urged that the figure for 1971 relied on by Broadcast Enterprises is an er-

[6] We might have considered an assignment to Rockledge, but Channel 292A, the only channel available in the area, is precluded by mileage separations. As to Palm Bay, we would not consider an FM channel assignment absent evidence of demand (see footnote 4).

[7] See Paragraph 4 of the Further Notice of Proposed Rule Making in Docket No. 14185, adopted June 25, 1962 (FCC 62–867), and incorporated by reference in paragraph 25 of the Third Report, Memorandum Opinion and Order (40 F.C.C. 747, 758 (1963)).

[8] The argument about Vero Beach is no longer apropos since a second channel (288A) was assigned there since the Broadcast Enterprise pleading was filed. See footnote 5, supra.

roneous one because of the poor financial showing of Station WTAI for that year which, has since measureably been improved, which circumstance the annual summary for 1972 would reflect. Radio Melbourne also deems it significant that WTAI did not file comments opposing the requested assignment and that Broadcast Enterprises' 1972 renewal application for its AM–FM operation showed an "operating profit" of $24,000 for the first nine months. Finally, Radio Melbourne attacks Broadcast Enterprises' position as a self-serving effort to protect its own position.

7. Radio Melbourne attacks Beach's petition as failing to furnish hard facts. It is argued that Satellite Beach is located in the midst of beach communities with a total of over 25,000 population, but that no explanation is given as to business activity needed to support a station, and Beach's submission about providing a community grade signal to part of Melbourne [9] strongly suggests that the more flexible course of action is to make an assignment to Melbourne which would be available for use there or at Satellite Beach (under the 10-mile rule).

8. Broadcast Enterprises take issue with Radio Melbourne's various contentions. Repeated are the arguments about the true population increase, about the comparison of radio growth and populations, the financial inability of Melbourne to support another station, and the deprivation of an assignment to Vero Beach. As to Radio Melbourne's characterization of WYRL(FM)'s programming, Broadcast Enterprises says that Radio Melbourne confuses local programming with programming format, and data are submitted to evidence the adequacy of its local programming. Broadcast Enterprises also takes issue with Church principally that the data adduced does not show an ability of Melbourne to support a sixth radio station and also that Church fails to disclose what its interests is.

9. We do not detail Beach's petition for rule making and supplement. We agree that in many respects it is not as precise as it might be. For example, there is a vague statement that Satellite Beach is located in the midst of a group of beach communities with a total of 25,000 population; on the other hand, the 1970 Census discloses that Satellite Beach is located in the Indialantic-Melbourne Beach Division with a total population of 33,247, and, as asserted, Satellite Beach's growth was phenomenal—from 825 in 1960 to 6,558 in 1970. No data are furnished to support its contention of being a tourist center. Moreover, while its comments may not be specific in this respect, we view them as evidencing an intent on the part of Beach to apply for Channel 292A, if assigned to Satellite Beach, and that if an application is granted that it will construct a station.

10. The fundamental issue is whether Satellite Beach is entitled to a first local aural service or whether a third FM channel should be added to a community which already has two (both in operation), and three AM stations. In this respect, Beach's pleadings might have been more cogent on many points, but, as noted above, the fair interpreta-

[9] Beach also claims that a station at Satellite Beach would cover Patrick Air Force Base, South Patrick Shores (an unincorporated community with a population of 10,313) and Indian Harbour Beach City (population 5,371) with a community grade signal.

tion is that Beach is ready, willing, and able to proceed to apply for a channel if assigned there and to promptly build if that application is granted. However, there are more important overall considerations on the basis of which we conclude that the public interest, convenience, and necessity are better served by the assignment of Channel 292A to Melbourne because this affords the greatest flexibility of use, that is, either at Melbourne or Satellite Beach (under the 10-mile rule). Satellite Beach receives an abundance of primary radio service from the five aural broadcast stations at Melbourne to which Satellite Beach is adjacent. Thus, the first channel priority is not compelling.[10] As concerns the assignment of Channel 292A to Melbourne, an important consideration is that it is the only channel available for assignment to a small area in or near Melbourne because of the assignment of the same channel to Avon Park.[11] In our view, assignment to Melbourne affords maximum usage flexibility. As to Broadcast Enterprises reliance on population criteria, we pointed out in the Notice that they are only a guideline which must be considered in balancing all considerations. Whether the number of radio stations at Melbourne have increased between 1960 and 1970 at a rate greater than its population or that of Brevard County is of little consequence, and such a correlation is meaningless other than to evidence increased interest in the broadcast media.[12] The argument that Melbourne cannot support another radio station is a question normally deferred for resolution at the application stage rather than in a rule making context. See *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. 470 (1940); *Carroll Broadcasting Co.* v. *FCC*, 258 F 2d 440 (D.C. Cir. 1958); and *Adrian, Mich.*, 37 F.C.C 2d 1021 (1972).

11. Authority for the action taken herein is contained in Sections 4(i), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended.

12. In accordance with the foregoing, IT IS ORDERED, That the FM Table of Assignments (Section 73.202(b) of the Commission's Rules and Regulations) IS AMENDED effective August 9, 1974, as concerns Melbourne, Florida, to read as follows:

City:	*Channel No.*
Melbourne, Fla	272A, 292A, and 296A

13. IT IS FURTHER ORDERED, That the petition of Beach Broadcasting, Inc. to assign Channel 292A to Satellite Beach, Florida, IS DENIED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

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[10] Indeed, the Third Report, Memorandum Opinion and Order in Docket No. 14185, said that the priorities were not firm promises to be kept but a list of internally inconsistent goals forming the basis for action by judicious balancing. 40 F.C.C. 747, 753–4 (1963). It also recognized the inadequacy of a mechanistic attempt to turn desirable goals into absolute requirements. *Ibid.*

[11] Pending are two applications for Channel 292A at Avon Park: Tri-County Stereo, Inc. (BPH–8523); and Morison Enterprises of Polk County (BPH–8782).

[12] We note that Brevard County's population growth is almost three times that of the state as a whole (37.1%) and that there seem to be substantial changes of population groupings. In addition to the consolidation of Eau Gallie and Melbourne, the 1970 Census reports the incorporation of three communities and many annexations.

109–001—74——6

FCC 74-628

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (RICHLANDS, VA., AND WELCH, W. VA.)	Docket No. 19677 RM-1949 RM-1911

MEMORANDUM OPINION AND ORDER

(Proceeding Terminated)

(Adopted June 12, 1974; Released June 19, 1974)

BY THE COMMISSION:

1. The Commission has before it a petition for reconsideration of our action [38 Fed. Reg. 26380, 42 F.C.C. 2d 727 (1973)] assigning Channel 288A to Richlands, Virginia, filed by Pocahontas Broadcasting Company ("Pocahontas"). In response, Clinch Valley Broadcasting Corporation ("Clinch") filed an untimely opposition to Pocahontas' petition and both parties filed a succession of pleadings [1] directed to procedural issues relating to acceptance of Clinch's opposition.

2. Its merits aside, the petition for reconsideration, unlike the opposition filed in response to it, was timely. Conversely, Clinch did not seek an extension of time to file late, nor did it seek leave to file late when it tendered its opposition. Clinch did state that it acted promptly to file its opposition upon becoming aware of the petition. Later, when the issue was joined, it did seek leave. In a series of pleadings the parties have contested the issue of acceptance of the late filing by Clinch and in so doing have presented us with much the same issue we have encountered before elsewhere: how are we to balance the need to observe procedural requirements with our overall responsibility to base all actions on public interest considerations.

3. In the law generally, and at administrative agencies in particular, the old procedural strictures no longer govern absolutely. Even so, when a case is to be decided on the "papers", what they contain and when they are filed is of central importance In deciding cases such as this, two related points need to be considered: fairness and effective administration. While the question could be viewed as one of deter-

[1] While Pocahontas did not file a reply to Clinch's opposition, it did file a motion to strike and a reply to Clinch's opposition to the motion. Clinch filed a motion to accept its late filed pleading (the opposition) and this motion was opposed by Pocahontas. Finally, Clinch filed a brief pleading to correct an inaccuracy in its opposition as originally filed.

mining whether either concept would be harmed by acceptance of the procedural infirmity it also could be viewed as one of determining how either objective would be advanced by such acceptance. In point of fact, we have considered such cases on the basis of an amalgam of these two approaches, so that explanations for the delay and need for the data have both been given consideration. In so doing, we have emphasized the need to observe procedural requirements while also recognizing the fact that an excess of rigidity ill serves the ends of justice. While more leniency may be given an inexperienced party, when, as here, a party is represented by counsel, we have taken a stricter view. We see nothing unduly harsh in requiring that the rules should be followed, absent either a valid explanation of the failure to do so, or the presence of extraordinary circumstances which otherwise provide a basis for special relief. The rules governing this case are clear. Unlike the situation in adjudicatory cases, petitions for reconsideration in a rule making proceeding do not have to be served on an adverse party.[2] Though direct service is not required, parties are not left in the dark, for the Commission publishes a public notice of such filings, giving pertinent data regarding who filed when, to have what action reconsidered. We do not question Clinch's *bona fides*, but its lack of actual knowledge cannot be the test. Otherwise, the notification procedure would be vitiated, the requirement as to the filing date would have no force, and as a result, disposition of the case would be at the mercy of the happenstance of actual notice. Moreover, while it is not involved here, the question of good faith could also arise and doubt raised about an assertion of when actual notice was obtained. In many instances, there would be no choice but to accept the assertion of the party who stated when such notice was received. Conversely, our notice procedure and the filing deadlines which are specified, deal with the subject clearly and exactly. Most importantly, parties can use the rules as a guide so that they may properly act to protect their interests. Clinch has not provided a showing that persuades us that this case merits different treatment or that an exception to the applicable requirements is appropriate.

4. Nor can we find any special need, based on fairness or otherwise, to accept Clinch's opposition. Whatever imbalance in addressing an issue that might ordinarily attach to acting on a petition for reconsideration without also having an opposition on hand, the case is different here. The petition was primarily directed to a number of engineering issues, issues which were not joined by Clinch through the submission of engineering data. Pocahontas' petition and attached engineering data can be adequately tested on their own, and Clinch's pleading adds nothing that is not also available from material which can be given official notice. This being the case, rejecting Clinch's opposition does not distort the result. Since it is not indispensable and since its lateness is unacceptable, it will be rejected.

5. On the merits, there are four questions to consider, three of them of an engineering nature. All relate to our having chosen Rich-

[2] The reason for this distinction is that who (or how many) the adverse parties in a rule making proceedings may be is not always clear. This is in sharp contrast to the contending litigants in an adjudicatory case, who know precisely who they are.

lands, Virginia in preference to Welch, West Virginia. The points are: (1) Did we unfairly give short shrift to Welch's position? (2) Did we rely on accurate data in finding two existing FM services to Welch and vicinity? (3) Did we properly conclude that the Richlands area received only one FM signal? and (4) Could a Richlands station provide the requisite principal city coverage? We shall consider these points seriatim.

6. Pocahontas charged that we erred in not considering all the demographic data which related to a comparison of the needs of the two communities. Although it suggested that we omitted a consideration of relevant data, it did acknowledge that the pertinent statement in the Commission's decision was "a lengthy description of local activities is not required because we do not question the ability of either community to support a station". The fact is, that we did not omit, save where the two communities and their environs had notable similarities. In such instances, we described their common condition, as for example pointing out that both were in a coal mining region and had each prospered or suffered with the fortunes of coal mining. In point of fact, the brevity of the description applied equally to Richlands. Thus, it could not be said that we considered data about Richlands but ignored those of Welch. Nor are the demographic facts notably different. They certainly do not overcome the significance that attaches to Richlands larger size. Although not put precisely in these terms, it appears that in reality the objection is not so much directed to the brevity of the description as to the weight to be accorded certain other aspects of the case. Thus, the real point of contention seems to be the weight to be given to the county situation as distinguished from that of Welch itself. While acknowledging that assignments are made to particular communities, Pocahontas charged that we improperly gave no weight to the position of Welch in its county and the needs of that county. This is incorrect. We recognized the fact that Welch's county had a larger population and that it lacked an FM assignment, as well as the fact that Richlands' county already had FM stations. These points were considered, but the weight of the last point was reduced because of the distance of the station from Richlands.[3] The discussion of our reasons for preferring Richlands, set forth in paragraph 7 of the Report and Order, need not be repeated here, for we do not see in Pocahontas' assertions a basis for concluding that we were in error. The point was (and is) not that Welch is undeserving. Rather, Richlands simply was found to be more deserving than Welch.[4] The fact of the location of a community centrally in a county may say something of its significance as a hub of activity but this is not a major matter in itself. It may become such when the pattern of station coverage is considered, but as discussed below, the evidence of that score does not support Welch's position. Finally, we are again reminded that Welch once had a station. Aside

[3] Pocahontas again mentions the argument about the possibility of establishing an AM station at Richlands but it has not shown why we should change our view that the assertion is speculative and the data submitted on its behalf defective.

[4] Pocahontas refers to being able to bring a first aural nighttime service to various communities in its county, such as War, but as mentioned below, this assertion is incorrect.

from the not insignificant fact of its departure which hardly supports Pocahontas' case, we have not been shown why this fact from a bygone era should be used to overcome a conclusion reached about present need.

7. Unlike the previous argument which asked us to again look at information in the record which we might not have properly weighed, Pocahontas' engineering arguments are based on new information directed to old issues. While the information is new, its existence is not, and a question thus arises under Section 1.106 of our rules which governs petitions for reconsideration. Paragraph (c) of that section specifies that new data is acceptable in a petition for reconsideration only if the circumstances are new ones or they were unknown and ordinary diligence would not have disclosed them or if the public interest so requires. The engineering issues are not new ones and clearly Pocahontas should have submitted its material earlier. Having recognized the importance of the issues, Pocahontas cannot sit back and then having lost, try again by the submission of new data on the same points. Nothing heretofore shown provides a basis for concluding that the public interest requires its acceptance. Moreover, as shown below, the data is faulty and so even if it were to be considered, the outcome would be unchanged.

8. In addition to Richlands' preference for being a larger community, having fewer stations and lacking a daily newspaper, we in part relied on the fact that an assignment there would bring a second FM service to a larger area. This finding of greater need stemmed from a comparison with Welch and our conclusion that most of a Welch station's coverage area already received two FM signals. This, Pocahontas attempts to rebut by submitting computations using a signal diffraction approach that has no sanction in the Commission's rules and has been regularly rejected by the Commission when proffered in other cases. It is a theoretical approach and as such, is of theoretical interest only. The methods of establishing the extent of FM service are of long standing and are specified in our rules. Using the prediction method we specify, the two stations in question do serve Welch with a 1 mV/m signal, but neither of these two stations reaches Richlands. One other station does, so the result is much as described before, Richlands would provide a second FM signal to a larger area. While it may be true that if the station at Marion improved its facilities it could cover some of the area the Richlands station could, we have no way of knowing if this would ever happen. In terms of current need, the situation is clear. Moreover, since these are not the only bases for preferring Richlands, even if this factor were excluded, the result would not change.

9. Of course, if the Richlands station were unable to function as such because it could not provide adequate principal city coverage, no matter what the theoretical advantage, the situation would be much altered. Pocahontas asserts that a Richlands station would indeed suffer just this impediment. It is true that because of spacing limitations, a site some distance from Richlands would have to be utilized. Using an assumed site the requisite distance from Richlands for its

computations, Pocahontas has submitted a terrain showing in an effort to establish that line-of-sight could not be obtained to most of Richlands. Thus, we are told, Clinch would not be able to provide the 70 dBu signal it is required to provide to the community. Even if the data were acceptable for submission at this point, and even if it dealt with a matter of consequence and did so with precision, the fact is that the material now has no weight. The reason is a simple one. Now that Clinch has filed its application, we no longer need rely on an assumed site. Its proposed site is a different one, closer to town than the assumed site and notably better from a shadowing point of view. Clinch's application shows this and our own study confirms it. It enables us to conclude that satisfactory service would be provided without undue shadowing. Considering the hilly terrain in this area of Virginia, a total absence of shadowing is not to be expected. But then the rules do not contain any such absolute requirement. Our review convinces us that Clinch can do what is expected of it and that in fact, the situation is better than it would have been, based on the earlier assumed site we previously considered to be acceptable. Accordingly, we continue to believe that the original action was correct and thus the petition must be denied.

10. Therefore, IT IS ORDERED, That the subject petition for reconsideration IS DENIED and our previous action IS AFFIRMED.

11. IT IS FURTHER ORDERED, That Pocahontas' Motion to Strike IS GRANTED and the Clinch Opposition IS DISMISSED as untimely.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-675

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 73.202(b), TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (Wellsville, N.Y. and Mitchell, S. Dak.)	Docket No. 19998

REPORT AND ORDER

(Proceeding Terminated)

(Adopted June 25, 1974; Released July 1, 1974)

BY THE COMMISSION:

1. In a Notice of Proposed Rule Making released April 10, 1974 (39 Fed. Reg. 13558), the Commission, by the Chief, Broadcast Bureau, proposed the amendment of Section 73.202(b), the FM Table of Assignments. The amendments proposed were (a) the substitution of Channel 228A for unused Channel 257A at Wellsville, New York and (b) the substitution of Channel 272A for unused Channel 269A at Mitchell, South Dakota. These substitutions would correct the present short-spacing situations affecting Channels 257A and 269A at the respective communities.

2. In response to the Notice, one comment was received. This was from BMA Broadcasting, Inc. (BMA), an applicant for a new FM station at Mitchell. BMA supports the proposals and states its intention to amend its application specifying the new channel if the proposals are finalized.

3. Because the Commission's proposals will correct a short-spacing problem, we find the channel substitutions outlined above to be in the public interest, convenience, and necessity. Canadian concurrence regarding the Wellsville substitution has been received.

4. In view of the foregoing and pursuant to the authority found in Sections 4(i), (303) and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective August 9, 1974, the FM Table of Assignments (Section 73.202(b) of the Rules) IS AMENDED to read, with respect to the cities listed, as follows:

City:	*Channel No.*
Wellsville, N.Y.	228A
Mitchell, S. Dak.	272A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-662

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 81 OF THE COMMISSION'S RULES, GOVERNING STATIONS ON LAND IN THE MARITIME SERVICES, TO REQUIRE FREQUENCY COORDINATION FOR THE USE OF MARINE LIMITED COAST VERY HIGH FREQUENCY AND SINGLE SIDEBAND STATIONS	Docket No. 19805 RM No. 1966 RM No. 2180

REPORT AND ORDER

(Proceeding Terminated)

(Adopted June 25, 1974; Released July 2, 1974)

BY THE COMMISSION:

1. A Notice of Proposed Rule Making in the above-captioned matter was released September 13, 1973 (FCC 73-898). The time for filing comments and reply comments has passed.

2. Comments were received from the Central Committee on Communication Facilities of the American Petroleum Institute ("Central Committee"), the Northern California Marine Radio Council ("NCMRC") and Collins Radio Company (Collins). The NCMRC comment was one of general support for the proposal.

COMMENTS OF COLLINS RADIO COMPANY

3. Collins, in its comments, was in general agreement with the concept of requiring frequency coordination, at least with respect to VHF assignments. Collins objected to requiring frequency coordination prior to granting applications for medium frequency (MF) and high frequency (HF) and objected to the application of the proposed 50-mile criteria to these classes of station because of the differences in propagation characteristics between VHF and M/HF frequencies. Collins also objects on the ground that the number of M/HF frequencies is small relative to VHF and requires substantially different coordination procedures. We agree with Collins and will delete MF and HF stations from the requirements of the rules herein adopted.

4. Collins also had reservations regarding organizations to be recognized as frequency coordinating committees. Collins' reservations were of two types: (a) That national organizations, rather than local or regional organizations should be preferred, and (b) organizations like the Southern California Marine Radio Council (SCMRC) and the Hawaiian Marine Radio Council (HMRC)

would not adequately represent licensees of MF and HF stations. Regarding the type and adequacy of an organization to be recognized as a frequency coordination committee, such problems can and should be raised at the time such organizations apply for recognition. Therefore, we feel that these problems may be deferred and considered during *ad hoc* determinations of this type, however, we know of no national organizations constituted to perform this function. Collins second reservation is moot, since we have agreed that MF and HF stations should not be subject to these requirements.

5. Collins also suggested that frequency coordination only be required of applicants where a frequency coordinating committee exists and has been recognized by the Commission. This suggestion is satisfied by the proposed rules because the rules only require a frequency coordination where the application is for a station "to be located in an area having a recognized frequency advisory committee." (See Section 81.359(a)).

COMMENTS OF THE CENTRAL COMMITTEE ON COMMUNICATION FACILITIES OF THE AMERICAN PETROLEUM INSTITUTE

6. The Central Committee also opposed requiring frequency coordination for MF and HF assignments. As stated above, with respect to Collins' comments, we agree this objection is valid and will not apply these requirements to stations of this type.

7. The Central Committee also objected to requiring frequency coordination with respect to VHF assignments. The Central Committee cited two reasons for its objections: (a) the limited number of VHF channels available for assignments to limited coast stations, and (b) the fact that the use of these channels "has developed in a statistically acceptable pattern." We do not agree with the Central Committee regarding these objections. It was for these very reasons that the Commission adopted its Notice of Proposed Rule Making, i.e., because the number of channels is limited and because use patterns have not been and are not successful.

8. The Central Committee also has reservations concerning the makeup of the frequency coordinating committees to be recognized. As we stated above, with respect to Collins' objections on this subject, these objections need not prevent providing for such committees. Rather, they should be raised at the time that recognition of a given frequency coordinating committee is being considered. Public Notice of the filing of an application for recognition as the designated frequency advisory committee will be given. Also, in accordance with § 81.359(d) of the rule herein adopted, the applicant committee must be representative of all persons eligible for VHF stations within the service area of the committee. This is clarified by the addition of appropriate language to the subparagraph. Further, even if a committee should be recognized, which is not entirely or perfectly representational, objections can be made to its recognition on an *ad hoc* basis. In this connection, it is important to note that the advice of such committees will be advisory only and will not bind the Commission in any way.

9. In view of the foregoing, we find that the proposed rule changes as modified above in response to the comments received are necessary and in the public interest.

10. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that the Commission's rules are amended, effective August 9, 1974, as set forth in the attached Appendix.

11. IT IS FURTHER ORDERED, that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Subpart J of Part 81 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended by adding a new Section 81.359 as follows:

§ 81.359 Frequency coordination.

(a) Except as provided in paragraphs (b) and (c) of this section each application for a new VHF limited coast station license or renewal or modification of an existing license to be located in an area having a recognized frequency advisory committee shall be accompanied by:

(1) A report based on a field study, indicating the degree of probable interference to existing stations operating in the same area. The applicant shall consider all stations operating on the working frequency or frequencies requested or assigned within 50 miles of the proposed station location, and,

(2) The report shall include a written statement that all existing licensees within the frequency and mileage limits contained in subparagraph (1) of paragraph (a) of this section and the frequency advisory committee as defined in subparagraph (2) of paragraph (c) of this section have been notified of the applicant's intention to file an application. The notice of intention to file shall provide the licensees concerned and the advisory committee with the following information: the frequency and emission; transmitter location and power; and, antenna height proposed by the applicant.

(b) Applications for modification need not be accompanied by evidence of frequency coordination, where the modification does not involve any change in frequency(ies), power, emission, antenna height, antenna location or area of operation.

(c) (1) In lieu of the requirements specified in paragraph (a) of this section, a statement from a frequency advisory committee may be submitted with the application. The committee shall comment on the frequency or frequencies requested or the proposed changes in the authorized station and give the opinion of the committee regarding the probable interference of the proposal to existing stations. The committee shall consider, as a minimum, all stations operating on the frequency or frequencies requested or assigned within 50 miles of the proposed station location. The frequency advisory committee statement shall also recommend a frequency or frequencies, which in the opinion of the committee, will result in the least amount of interference to proposed and existing stations. In addition, committee recommendations may appropriately include comments on other technical factors and may contain recommended conditions or restrictions which it believes should appear on authorization to lessen the possibility of interference.

(2) A frequency advisory committee must be so organized that it is representative of all persons who are eligible for VHF limited coast stations within the service area of the recognized frequency advisory committee. A statement of organization, service area and composition of the committee must be submitted to the Commission for approval. The functions of any advisory committee shall be purely advisory in character to the applicant and the Commission, and its recommendations cannot be considered as binding upon either the applicant or the Commission.

FCC 74-635

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AN INQUIRY RELATIVE TO THE FUTURE USE OF THE FREQUENCY BAND 806-960 MHz AND AMENDMENT OF PARTS 2, 18, 21, 73, 74, 89, 91, AND 93 OF THE RULES RELATIVE TO OPERATIONS IN THE LAND MOBILE SERVICE BETWEEN 806 AND 960 MHz.	Docket No. 18262

MEMORANDUM OPINION AND ORDER

(Adopted June 19, 1974; Released June 25, 1974)

BY THE COMMISSION:

1. Airsignal International, Inc. (Airsignal) asks for a stay of the effective date (June 17, 1974) of the rule amendments adopted in our Second Report and Order in Docket No. 18262, 39 F.R. 16831 (May 10, 1974), Land Mobile Radio Service, 46 FCC 2d —— (1974).[1]

2. In support of its position, Airsignal alleges that there "is a pressing need for a stay to avoid irreparable injury" which will arise, it reasons, because "Numerous applicants will be forced to embark upon an immediate, costly undertaking in preparation for multiple filings by June 17 to protect their interests." This, it says, will require, "Frenzied, expensive application preparatory work . . . notwithstanding the likelihood of substantial modifications to the decision either on reconsideration or appellate court review."

3. It argues, further, that the "Order" is "revoluntionary in character" and, if applications are entertained at this time and licenses granted, the "Commission will be hard pressed to retrieve the many permits and licenses it may have issued prior to final disposition." Airsignal then cautions that the "Commission would be well advised to stay the effective date of the Order on its own motion" to protect "the Commission and its busy staff from being inundated with a flood of applications that most likely will be dismissed as inconsistent with the revised rules promulgated after Commission reconsideration or court review."

4. While Airsignal makes other objections, these are the major ones, and we find none of them persuasive. On its major point, we thought we had made it clear that we would accept no applications for 900-MHz facilities until approval, by the General Accounting Office (GAO), of our new requirements for submission of "certain information and data in addition to that now furnished." On this we advised

[1] This matter is disposed of without consideration of responsive pleadings. Section 1.45(e) of the Rules.

that, when the "Necessary clearance" was obtained, i.e., approval of our supplementary form, "a public notice" would be issued, and that until that time "applications may not be filed." *Second Report and Order*, *supra*, at para. 111. Thus, contrary to what Airsignal had indicated, there will be no need for "frenzied" preparation of 900-MHz proposals. To make this very clear, we give assurance, here, that all parties will be afforded reasonable notice as to when applications may be filed, and that all concerned will have an adequate opportunity to prepare their proposals in an orderly fashion. Certainly, we do not intend to give notice in a way that would bring about any of the dire consequences about which Airsignal speculates.

5. The remaining allegations are premised on the supposition that mass modification of the new procedures will be necessitated upon reconsideration and court review; and that, in such circumstances, it would be better to wait until a final and definitive decision is reached before implementing our new assignment plan.

6. We do not agree with Airsignal in these views. The filing of petitions for reconsideration or petitions for review by the courts does not require a stay. And further, in this regard, our review of the allegations made by Airsignal in its concurrently filed "Petition for Reconsideration" discloses nothing that persuades us to reach a different decision on the request it makes, here.

7. We must conclude, then, that a stay is not justified. This proceeding was initiated some six years ago and we feel that the time has arrived for us to reach a final determination on our allocation and assignment plan for the 900-MHz channels. Further delay should not be allowed, unless, of course, good and substantial reasons exist to require it, and this is not the case here.

8. Accordingly, the "Petition for Stay," filed by Airsignal International, Inc., on June 10, 1974, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

FCC 74-663

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 97 TO DELETE CERTAIN AMATEUR RADIO STATION LOG REQUIREMENTS	RM-2382

ORDER

(Adopted June 25, 1974; Released July 2, 1974)

BY THE COMMISSION:

1. The purpose of this Order is to amend the rules for the Amateur Radio Service to delete requirements for certain information to be entered into the log for an amateur radio station.

2. The Maryland FM Association, Inc., in petition RM-2382, requests amendment of § 97.103 in order to effect such deletions. Petitioner claims the practical aspects of maintaining a station log at times can be very cumbersome and inconvenient. They point out other services regulated by the Commission where logs are not required, and question if amateur station logs are essential to the Commission's task in inspecting amateur stations and reviewing their operation.

3. The logs required by § 97.103 do not, in fact, play a major role in the Commission's enforcement efforts, and we have no information on the role they play in the amateurs' self-enforcement efforts. A station log is sometimes presented to the Commission by an amateur operator attempting to prove, or disprove, some aspect of his past operation. For instance, he may wish to prove his station was not in operation during a period for which a complaint was received or a violation of the rules was observed. Or he may wish to prove he had accumulated the operating time required by § 97.13(a) at the time of license renewal. A well kept log can, therefore, serve the amateur operator. For this reason, we feel most amateurs will probably continue to log data in addition to that required, a conclusion shared by the petitioner.

4. The present rules do provide exceptions to the logging requirements, most notably for those stations in mobile operation. The underlying purpose for this exception is safety considerations during times the amateur is simultaneously driving an automobile and operating an amateur station. There has been no noticeable impact resulting from this exception, and based upon this experience, it can be predicted there will be no significant degradation of the Service by extending the relaxation.

5. Petitioner recommends rule provisions such that, in specific instances, a station may be required to enter additional information into the log as may be deemed necessary by the Commission. We are in agreement with their suggestion. Furthermore, we believe the

109-001—74——7

following should be logged: The location and dates for any operation, except mobile; signatures of visiting control operators; and third party traffic. Petitioner states his agreement with these requirements.

6. The amendments are given in the Appendix. It should be noted the requirements for logging certain technical data in § 97.111(f) remains unchanged. The amendments adopted herein are editorial revisions, and deletions and relaxations of existing rules provisions which we consider no longer necessary. We believe they will inure to the benefit of many and to the detriment of none, and they will better serve the public interest. Therefore, prior notice of rule making and effective date requirements are unnecessary, pursuant to the Administrative Procedure and Judicial Review provisions of 5 U.S.C. 553(b)(3)(B).

7. Therefore, IT IS ORDERED, that, pursuant to §§ 4(i) and 303 (j) and (r) of the Communications Act of 1934, as amended, Part 97 of the Commission's Rules and Regulations are amended as set forth in the attached Appendix, effective July 10, 1974. IT IS FURTHER ORDERED That RM-2382 is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

§ 97.103 of Chapter I of Title 47 of the Code of Federal Regulation is amended to read as follows:

§ 97.103 *Station log requirements.*

An accurate legible account of station operation shall be entered into a log for each amateur radio station. The following items shall be entered as a minimum:

(a) The call sign of the station, the signature of the station licensee, or a photocopy of the station license.

(b) The locations and dates upon which fixed operation of the station was initiated and terminated. If applicable, the location and dates upon which portable operation was initiated and terminated at each location.

(1) The date and time periods the duty control operator for the station was other than the station licensee, and the signature and primary station call sign of that duty control operator.

(2) A notation of third party traffic sent or received, including names of all third parties, and a brief description of the traffic content. This entry may be in a form other than written, but one which can be readily transcribed by the licensee into written form.

(3) Upon direction of the Commission, additional information as directed shall be recorded in the station log.

FCC 74-696

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of: MAYO FOUNDATION OF THE MAYO CLINIC, ROCHESTER, MINN. For Construction Permits in the Cable Television Relay Service	CPCS-71-72

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 5, 1974)

BY THE COMMISSION:

1. Pending before the Commission are two unopposed applications (CPCS-71-72) for construction permits for studio to headend link (SHL) stations in the Cable Television Relay Service filed by the Mayo Foundation, Mayo Clinic, Rochester, Minnesota, on January 18, 1974. The Mayo Foundation proposes a 3.45 miles link between its television production studio located at the Mayo Clinic and the headend facilities of TelePrompTer Cable TV, the local cable television system, to provide medical education programs to nearby community hospitals.

2. Since the Mayo Foundation is neither an owner of a cable television system nor a cooperative enterprise wholly owned by cable television owners or operators, it is not eligible to be the licensee of a cable television relay station. Pursuant to Sections 78.3 and 76.7(a) of the Commission's Rules, it has included with its applications a request for waiver of the eligibility requirements of Section 78.13.[1]

3. In support of its waiver request, Mayo Foundation states that it has a complete television production studio and that the microwave stations applied for will provide a necessary link for the distribution of "live" medical educational programming from the studio to nearby community hospitals served by the local cable television system.

4. The continuing education programs provided by the Mayo Foundation to members of the nearby medical community would appear to be in the local community population's interests. We can see no good reason for denying the request.[2]

In view of the foregoing, the Commission finds that a grant of the subject applications for construction permits in the Cable Television

[1] Section 78.13 of the Rules provides in part that "a license for a cable television relay station will be issued only to the owner of a cable television system or to a cooperative enterprise wholly owned by cable television owners or operators."

[2] The Commission in *The Trustees of Hampshire College*, FCC 73-387, 40 FCC 2nd 626, granted a similar waiver of Section 78.13 for the purpose of transmitting educational programming originated by the college to the local cable television system.

Relay Service and of the requested waiver would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED, That the above-captioned applications (CPCS–71 and 72) ARE GRANTED, and the appropriate construction permits for a studio to headend link will be issued.

IT IS FURTHER ORDERED, That the request for waiver filed by the Mayo Foundation IS GRANTED to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-657

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the matter of ESTABLISHMENT OF POLICIES AND PROCEDURES FOR CONSIDERATION OF APPLICATIONS TO PROVIDE SPECIALIZED COMMON CARRIER SERVICES IN THE DOMESTIC POINT-TO-POINT MICROWAVE RADIO SERVICE AND PROPOSED AMENDMENTS OF PARTS 2 AND 21 OF THE COMMISSION'S RULES	Docket No. 18920 (RM-1700) (RM-2024)

SECOND REPORT AND ORDER

(Adopted June 25, 1974; Released July 5, 1974)

BY THE COMMISSION:

1. On December 4, 1972 the Commission released a *Further Notice of Proposed Rule Making* in this proceeding (38 FCC 2d 385) concerning local distribution (Issue E), including specific proposals for the allocation and use of various microwave radio bands. The proposed rules dealt with the use of the lower common carrier bands (i.e. 2 GHz through 11 GHz) and including petitions for use of the bands 10.7–11.7 GHz (RM-2024) and 38.6–40 GHz (RM-1700) for local distribution.

2. Comments were filed by 22 parties: 12 common carriers—Microband Corporation of America, Southern Pacific Communications Corporation, GTE Service Corporation, CML Satellite Corporation, Western Union Telegraph Company, Data Transmission Company (Datran), American Telephone and Telegraph Company (AT&T), United Video, Inc. and associated companies, Western Telecommunications Inc. (WTCI), Nebraska Consolidated Communications Corporation (NCCC), Communications Satellite Corp. (Comsat), and Microwave Communications, Inc. (MCI); 4 equipment manufacturers—Norden Division of United Aircraft Corporation (Norden), Vicom Division of Vidar Corporation (Vicom), Avantek, Inc., and Varian Division of Micro-link Products (Varian); 5 trade associations—Electronics Industries Association (EIA), United States Independent Telephone Association (USITA), Utilities Telecommunications Council (UTC), American Petroleum Institute (API), and Multipoint Microwave Common Carriers Association (MMCCA); and one private radio user—Aeronautical Radio, Inc. (Arinc). Reply comments were filed by GTE, CML Satellite, Datran, AT&T, NCCC, Comsat, MCI, UTC and API.

3. The comments generally supported the proposed rules, especially those allocating the higher frequency bands (i.e. 18 GHz and above) for use. However, there were numerous differences of opinion as to

various details. Drawing the most comments were the 18 GHz frequency plan, the path distance and loading criteria for the lower band frequencies, and frequency tolerance changes. In the following paragraphs the comments will be summarized in connection with our discussion of each subject matter.

DISTANCE AND LOADING GUIDELINES

4. In the *Notice* we concluded that it was difficult as a practical matter, to distinguish between frequency usage for "intercity" and "local distribution" usage. Therefore, we proposed guidelines for use of lower band frequencies (i.e. in the 2 GHz, 4 GHz, 6 GHz and 11 GHz common carrier bands) which would involve the use of various minimum distance and loading criteria for each band. The majority of the comments supported this approach although a number urged more flexibility or exceptions. Some of the circumstances that were cited that should warrant exceptions to the minimum path distance requirements were: demands of the terrain, precipitation characteristics of the area and remote geographical area with limited growth potential. With respect to the channel loading guidelines, several suggested a liberal policy of waivers in the 6 GHz band where frequency congestion is no problem. Some suggested that the minimums be reduced (e.g. to 600 voice channels at 4 and 6 GHz and 240 at 11 GHz), while others urged use of a longer traffic projection period. AT&T suggested that the rules provide exceptions for the use of special narrowband auxiliary channels in the 4 and 6 GHz bands which are used for order circuits, alarm transmission and protection switching control.

5. Many of these comments raise valid points. Therefore, we are making several changes in the rules as proposed. We believe the minimum path distance criteria as set forth is reasonable, but we recognize that perhaps a greater degree of flexibility in its application may be warranted. Therefore, we will permit some additional exceptions in individual cases where it can be shown that the proposed frequency usage is consistent with good engineering practices but specific explanation of the practical problems that would be encountered by adhering to the path distance guidelines will be required.[1] However, we wish to emphasize that it is our intention that the guidelines be followed in the vast majority of situations.

6. With regard to the minimum loading guidelines, the rules have been modified to: (a) permit a longer projection period than five years where there is a reasonable basis to use such a period; (b) allow use of the narrow band auxiliary channels which are included in the existing channel plans for the 4 and 6 GHz bands; and (c) reduce the minimum channel loading for the 11 GHz band from 250 to 240 voice channels.[2] Also, we wish to clarify the following points. First, these loading guidelines are not intended to be synonymous with full channel occupancy. Before a second channel is authorized over the same path, the

[1] Once the Commission has considered and authorized a variance in this regard, subsequent applications involving additional frequencies on the same path may reference the original showing rather than make a new showing.

[2] In recognition of our decision below concerning bandwidth in the 11 GHz band, we are specifying two loading figures for the band: one for equipment employing a bandwidth of 20 MHz or less, and one for equipment utilizing between 20 and 40 MHz.

applicant must show that the first channel equipment has reached, or will shortly reach, its reasonable maximum capacity. Secondly, we have used the term "4 KHz channel" to define a standard voice grade channel. However, in recognition of the increasing interest in transmission of voice by digital techniques, we will now primarily refer to such channels as voice channels so as to not confuse them with digital transmission capacity (expressed in bits per second) which is intended to apply to data traffic. Our intention, in any event, is that the loading guidelines for voice circuits (regardless of whether derived by analog or digital means) are separate from the guidelines for digital data circuits. Thirdly, there appears to be some misconception about our policy regarding the 2 GHz band inasmuch as the *Notice* referred to this band as appropriate for less than 250 circuits. We did not intend that this (or any other) figure be considered as the maximum permissible loading. Our policy has been, and will continue to be, to encourage the development of greater equipment capacity in all frequency bands, limited only by bandwidth and other restrictions necessary to avoid interference to adjacent channels.

THE 11 GHZ BAND

7. In the *Notice* we specifically solicited comments on a more efficient use of the 11 GHz band (10,700–11,700 MHz). We discussed two primary alternatives, both based on 40 MHz channel spacing now in common practice. One involved the use of a full 40 MHz channel or a 20 MHz "half channel." The other was MCI's proposal (RM–2024) for a 30 MHz and 10 MHz channel mix, the 30 MHz channels being used for high capacity intercity routes and the 10 MHz channels for local distribution. The MCI proposal drew little support. The primary difficulty cited was the potential for frequency conflict with the alternate (or offset) 11 GHz frequency plan [3] which is used primary to avoid interference on intersecting routes. Most of the comments favored the 40 MHz plan because of its greater potential capacity and the added flexibility the 20 MHz channel would offer for lower density routes.

8. After considering this matter, we have decided to reject the MCI proposal because of the interference potential with the offset frequency plan. On the other hand, we believe the 40 MHz–20 MHz usage will significantly improve the efficiency in use of the band. The 20 MHz "half channel" will be consistent with present frequency plans and will provide users with a channel more efficiently tailored for medium capacity routes. However, the 40–20 plan will be efficient only if equipment manufacturers design equipment to effectively utilize 20 MHz or 40 MHz rather than equipment which is now routinely accepted for about a 30 MHz bandwidth. However, we believe that rules to accomplish such an objective should be adopted only after prior notice. This we intend to do in a separate proceeding which we hope to initiate in the near future. In the meantime we urge manufacturers to design new equipment to effectively use all, or nearly all, of a 20 MHz or 40 MHz channel.

[3] In the alternate frequency plan each frequency is shifted 20 MHz from the standard plan.

THE 18 GHZ–22 GHZ BANDS

9. With respect to the 18 GHz band (17,700–19,700 MHz), we proposed eight two way channels, each 220 MHz wide, for wide band use and a segment 240 MHz wide for narrow band use with possible expansion into one adjacent wide band channel (channel 8). Also, the *Notice* referred to a tentative proposal reached in the *Notice of Proposed Rule Making* in Docket No. 19547 (37 FR 15714) to restrict use of the 18 GHz to common carriers. However, we indicated that comments on that question would be accepted in this proceeding. The proceeding in Docket No. 19547 was subsequently finalized but a final decision on use of the 18 GHz band was deferred for this proceeding (see 39 FCC 2d 959 at 966). As to the 22 GHz band (21.2–23.6 GHz), we proposed its use for narrow band systems (i.e. 100 MHz or less) and shared between carriers, private users and the Government. We also raised the question of whether there should be a channel plan for the 22 GHz band and the narrow band portions on the 18 GHz band.

10. Most of the comments recognized the need for both wide and narrow band communications in the 18 GHz band. However, several took more extreme positions. For example, Datran, urged that the band be divided into 20 40 MHz wide channels plus a 5 MHz guard on either side, a plan obviously designed for all narrow band use. On the other hand, AT&T urged that all narrow band users be excluded unless it can be shown that there is no room in the 22 GHz band. Several comments took the position that it is too early to develop a definitive frequency plan or that a plan should be developed by an industry committee. However, most of the comments appeared to generally support the frequency plan proposed, but many recommended various modifications too numerous to mention individually. The most common recommendation was that more spectrum be allocated for narrow band users. With respect to private use of the band, the response was predictable; carriers opposed such use, while the private user groups supported sharing or a separate allocation for private use within the band. Several of the carriers and private users indicated that sharing may be difficult because of dissimilar technical standards and requirements in the two services. Comment on the 22 GHz band was much more limited. Datran did not consider the band a viable alternative to the 18 GHz band, but it did suggest a plan be developed similar to its proposal for 18 GHz. On the other hand, Southern Pacific saw 22 GHz as a major band for local distribution and urged development of a channel plan similar to that proposed for the 39 GHz band. MCI suggested 21.2 to 22.8 GHz be allocated for common carrier, on a half band basis with unstructured bandwidths, and 22.8 to 23.6 GHz for private users.

11. In considering the future of the 18 GHz band we reject those suggestions of splitting off various segments for this service or that service. We have attempted to develop the 18 GHz and other higher band frequencies in a manner which would encourage the development of each band for a type of use for which we believe it is best suited, considering technical development and economic incentive.

To fragment the band would thwart its development in any real innovative fashion. Primarily, we see the 18 GHz band used for wide channel systems which would be highly satisfactory for high capacity trunking within metropolitan areas or as a short range intercity link between or into large metropolitan areas. The severe frequency congestion in the lower common carrier bands in many such areas makes such a system highly desirable, if not a necessity. Otherwise, in the future major communications routes within and into large cities will have to rely on buried cable (or wave-guide) which is much more costly and can have a negative impact on environment during the construction stage.

12. While we would prefer most narrow channel systems be developed in the 22 GHz band, we recognize that path attenuation at 22 GHz is somewhat greater than at 18 GHz. We believe that, with slight modification, the channel arrangement we proposed can assure the success of wide band systems at 18 GHz while giving a reasonable growth potential to narrow channel systems in the same band. Accordingly, we are adopting the same channel plan as proposed but with two modifications. First, the channel arrangement has been renumbered as suggested by AT&T. Secondly, we are providing one additional expansion channel for narrow band systems. This second expansion channel (channel 7) is the same frequency but of opposition polarization from the first expansion channel (channel 8) and, therefore, it is not likely to further reduce the capacity of any wide channel system beyond that imposed by narrow band use of channel 8.[4] However, we wish to point out that the use of both channel 7 and 8 will be, as proposed, on an overflow basis. That is, before either will be authorized for narrow band use it must be shown that the 240 MHz primary allocation for narrow band use is unavailable on the path in question. Due to the superior performance characteristics of antennas at 18 GHz and transmission range limitations in the band, frequencies may be repeated much more often than would be possible in the lower bands. Therefore, we believe that the use of the expansion or overflow channels will not be widespread. However, where such use is necessary we will expect that frequency coordination take into consideration potential route blockage problems.[5]

13. We believe that the 18 GHz band should be considered primarily a common carrier band. Nonetheless, we do recognize the considerable gap between the current operational fixed allocation of 12,200–12,700 MHz and 22 GHz, which would be the next higher band for private use. Therefore, we believe that some limited sharing of the 18 GHz band with operational fixed users would be desirable. Despite some of the recognized problems inherent in cross service sharing, we are of the opinion that with proper care it can be successfully accomplished. In this connection, private users will be required to coordinate their frequency selections in the same manner as the carriers. In those

[4] We understand that the use of two digital transmitters on the same frequency, but of opposite polarization, is effective only where the signals utilize the same antenna (apparently because of off-path polarization shift). Therefore, use of channel 8 by narrow band systems would block development of channel 7 for a wide band system on a potentially interfering path.

[5] See paragraph 134 of the *First Report and Order* in this proceeding, 29 FCC 2d 870.

instances where conflicts between the two services arise, the Commission will make a final determination. Additionally, the technical standards which must be met by private users will be largely identical to those for the carriers under Part 21 of the rules. Such modifications to the rules for private users as are necessary will be incorporated in connection with the proceeding in Docket No. 19869 *et al.*, establishing a new Part 94 of the Rules.[6] In this way, we hope to assure an efficient development of the band with as much compatibility between the services as possible.

14. With respect to the 22 GHz band, we are making few changes in the rules as proposed. We believe that the band should be as unstructured as possible to encourage its innovative use. Since there is 2400 MHz available in the band, congestion is not likely to be a problem in the foreseeable future. However, this does not mean that frequency assignments should not be made in an orderly manner. Although we consider the entire 2400 MHz to be shared, there is no reason why the technical problems involved in sharing (as noted in paragraph 13) need be of early concern. We are adopting rules which will in effect divide the bands into four segments of 600 MHz each. The first and third segments (i.e. 21,200–21,800 MHz and 22,400–23,000 MHz) shall be for primary use by common carriers. The second and fourth segments (i.e. 21,800–22,400 MHz and 23,000–23,600 MHz) shall be primarily for operational fixed use. In selecting a frequency or frequency pair, a user shall endeavor to select the lowest frequency available in a particular segment on a given path. A common carrier may utilize a frequency in an operational fixed segment when all common carrier frequencies on a path are exhausted. Of course, the same policy shall apply to private users seeking use of a frequency in a common carrier segment. Utilizing this approach, we believe cross service sharing problems will be minimized, yet more complete use of the full band enhanced. We do not anticipate subjecting the private user to the prior coordination requirements outlined for the 18 GHz band as long as the proposed use is within one of the band segments designated primarily for operational fixed use.

THE 39 GHZ BAND

15. In the 39 GHz band (38,600–40,000 MHz) we proposed a frequency plan consisting of 14 channel pairs, each 50 MHz wide, which would be allocated for exclusive use by a carrier within a specified geographic area. Under this plan a licensee would be permitted to subdivide and use the assigned frequencies anywhere within such area without further authorization. The comments heavily supported this proposal. AT&T suggest that the proposal be modified to also allow assignment in the band for television pickup in the Local Television Transmission Service. In addition, there was some comment supporting, and objecting to, private use of 39 GHz. API suggested that two channels be set aside for private use exclusively.

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[6] See *Notice of Proposed Rule Making*, released Nov. 26, 1973 (FCC 73–1162).

16. As a result of the comments, we are adopting the rules as proposed for 39 GHz without significant modifications. We are rejecting AT&T's suggestion for television pick up use. At this time it appears that the current allocations for that purpose in the 6 and 11 GHz bands are adequate to meet the demand. As to private use of the band we feel that there should be provision made for the sharing of frequencies in this range between the carriers and operational fixed users. Therefore, we are making available to private users exclusive rights to frequencies within an area in the same manner as for the carriers. However, we will require all users at 39 GHz, both private and common carriers, to show a reasonable projected need for a multiplicity of transmission paths within a given area before an exclusive 50 MHz assignment will be made in this band. We believe that requirements for one or several paths will be better served through use of frequencies in the 22 GHz band, as in the case of sharing at 18 GHz, the technical standards required at 39 GHz for licensees under the proposed Part 94 will be largely identical to those for common carriers.

FREQUENCY TOLERANCE

17. In the *Notice* we solicited comments on frequency tolerance requirements for frequencies 18 GHz and higher and whether the lower band tolerance should not be substantially tightened. We mentioned the figure .005 percent for the frequency range 2,450–10,500 MHz and .03 percent above that. The comments on this point were varied. Recommendations for the lower bands (usually defined as those frequencies below 10 to 15 GHz) ranged from .002 percent to .005 percent (the most common) and .03 percent; higher band recommendations were most commonly .03 percent but there were several recommendations for .01 percent. Comsat suggested .005 percent or 5 percent of the authorized bandwidth, whichever is the smaller.

18. After considering this matter we have decided to impose a tolerance of .005 percent for frequencies in the range 2,450–12,200 MHz and .03 percent above that. The large majority of equipment being manufactured today is capable of operation within this range. While improved transmitter stability will be an important factor over the long term as the spectrum becomes increasingly congested and more heavily loaded, the reduction from .03 to .005 percent is not critical, we believe, in the near future. Therefore, we have decided to make the conversion as painless as possible by applying the new standard only to new equipment authorized for use one year from the effective date of the rules.[7] Equipment authorized previous to that date will be "grandfathered" for life at the pre-existing .03 percent tolerance figure. Also, we are providing one further exception to the .005 percent figure. It was pointed out that the long range heterodyne systems are sometimes capable of significant cumulative frequency error when

[7] The year's delay is to preclude the necessity for expensive modification of equipment currently being manufactured or otherwise in the supply pipeline. However, we urge all manufacturers to modify the design of all equipment not meeting the new stability requirements as soon as possible.

such equipment is operated over a number of hops without the signal being returned to baseband. Although, we do not believe that this will be a significant problem on an overall basis, we are including a provision in the rules whereby a somewhat looser tolerance can be authorized in specific instances where it can be justified. However, this is an operational relaxation only and will not affect type acceptance requirements for equipment.

OTHER MATTERS

19. The comments contained a number of miscellaneous suggestions concerning various matters. While we have considered all of these, we do not think it necessary to discuss each. Where we believed any such suggestion had merit and was within the scope of this proceeding, it was incorporated into the rules as contained in the Appendix. Otherwise, such recommendations should be considered denied.

20. Two items, however, do merit brief comment. Pursuant to several suggestions, we are changing the maximum bandwidth in the band 27,500–29,500 MHz from 200 MHz to 220 MHz. This will enable equipment similar to that envisioned for 18 GHz to be developed for the higher band. Also, in the band 31,000–31,200 MHz we are reducing the maximum bandwidth from 200 MHz to 50 MHz due to the small size of the band. With respect to the proposed power limitation above the 15 GHz to 2 watts, we had a number of comments. Most suggested a higher limit, e.g. 10 or 20 watts. While we understand that equipment cannot now be economically manufactured with such power capability, our rules should not be unduly restrictive with respect to future development. Accordingly, we are relaxing that limitation to allow a maximum of 10 watts. However, we wish to emphasize that our policy (as expressed in Section 21.107(a) of the Rules) with regard to limiting the output power in each individual application to the minimum necessary to accomplish reliable communications remains unchanged.

CONCLUSION

21. In view of the foregoing, we are of the opinion that the modified rules as discussed above are in the public interest. Accordingly, IT IS HEREBY ORDERED, pursuant to authority contained in Sections 4(i), 303 and 403 of the Communications Act of 1934, as amended, that Parts 2 and 21 of the Commission's Rules and Regulations ARE AMENDED as reflected in the attached Appendix effective August 9, 1974.[8] IT IS FURTHER ORDERED that this proceeding IS TERMINATED with respect to Issue E (and RM–1700 and RM–2024), but the Commission retains full jurisdiction over Issue D.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

[8] The text also incorporated some rule changes necessary for consistency with the rules adopted in Docket No. 19547.

APPENDIX

Parts 2 and 21 of Chapter I of title 47 of the Code of Federal Regulations are amended as follows:

1. In § 2.106, the Table of Frequency Allocations is amended in columns 7 through 11 for the bands 17.7–19.7 GHz, 21.2–22.0 GHz, and 22.0–23.6 GHz; footnote NG106 is amended and new footnote NG107 is added to read as follows:

§ 2.106 Table of Frequency Allocations.

Band (GHz)	Service	Class of Station	Frequency (GHz)	Nature of Services	Of Stations
7	8	9	10	11	
*	*	*	*	*	*
17.7–18.36	Fixed. Fixed-Satellite. Mobile.	Fixed. Mobile. Space.		Domestic fixed public.	Fixed-Satellite.
18.36–19.04 (NG106).	Fixed. Fixed-Satellite. Mobile.	Fixed. Mobile. Space.		Domestic fixed public. Operational fixed.	Fixed-Satellite.
19.04–19.70	Fixed. Fixed-Satellite. Mobile.	Fixed. Mobile. Space.		Domestic fixed public.	Fixed-Satellite.
*	*	*	*	*	*
21.2–22.0 (NG107).	Earth Exploration-Satellite. Fixed. Mobile.	Fixed. Mobile except aeronautical mobile. Space.		Domestic fixed public. Operational fixed. Earth Exploration-Satellite.	
22.0–23.6 (NG107).	Fixed. Mobile.	Fixed. Mobile except aeronautical mobile.		Operational fixed. Domestic fixed public.	
*	*	*	*	*	*

* * * * * * *

NG106 In the band 18.36–19.04 GHz, frequencies in the band segments 18.36–18.58 GHz and 18.82–19.04 GHz may be assigned for use by operational fixed stations, only on condition that suitable alternative frequencies in the band segment 18.58–18.82 GHz are not available for assignment to such stations.

NG107 In the band 21.2–23.6 GHz, frequencies in the band segments 21.8–22.4 GHz and 23.0–23.6 GHz may be assigned to domestic fixed public stations, only on condition that suitable alternative frequencies in the band segments 21.2–21.8 GHz and 22.4–23.0 GHz are not available for assignment to such stations. Similarly, frequencies in the band segments 21.2–21.8 GHz and 22.4–23.0 GHz may be assigned to operational fixed stations, only on condition that suitable alternative frequencies in the band segments 21.8–22.4 GHz and 23.0–23.6 GHz are not available for assignment to such stations.

2. In Section 21.1 add the following definition, in appropriate alphabetical order, to read as follows:

§ 21.1 Definitions

* * * * * * *

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

* * * * * * *

3. In § 21.101 the table in paragraph (a), footnote 2, and par. (b) are amended, and new par. (c) is added to read as follows:

§ 21.101 Frequency tolerance

* * * * * * *

Frequency range (MHz)	Frequency tolerance (percent)		
	All fixed and base stations	Mobile stations over 3 watts	Mobile stations 3 watts or less [1]
25 to 50	0.002	0.002	0.005
50 to 450	.0005	.0005	.005
450 to 512	.00025	.0005	.0005
512 to 1,000 [2]	.0005	.0005	.005
2,110 to 2,200	.001	—	—
2,200 to 12,200 [2]	.005	.005	.005
12,200 to 40,000	.03	.03	.03

* * * * * * * * *

[2] Beginning August 9, 1975, this tolerance will govern the marketing of equipment pursuant to Sections 2.803 and 2.805 of this Chapter and the issuance of all authorizations for new radio equipment. Until that date new equipment may be authorized with a frequency tolerance of .03 percent and such equipment may continue to be used for its life provided that it does not cause interference to the operation of any other licensee. Equipment authorized prior to June 23, 1969 at a tolerance of .05 percent may continue to be used until February 1, 1976 provided it does not cause interference to the operation of any other licensee.

* * * * * * * * *

(b) Heterodyne microwave radio systems may be authorized a somewhat less restrictive frequency tolerance (up to .01 percent) to compensate for frequency shift caused by numerous repeaters between base band signal insertion. Where such relaxation is sought, applicant must provide all calculations and indicate the desired tolerance over each path. In such instances the radio transmitters used shall individually be capable of complying with the tolerance specified in paragraph (a) above.

(c) As an additional requirement in any band where the Commission makes assignments according to a specified channel plan, provisions shall be made to prevent the emission included within the occupied bandwidth from radiating outside the assigned channel at a level greater than that specified in Section 21.106.

4. In § 21.107 par. (b) is amended to read as follows:

§ 21.107 Transmitter power.

* * * * * * * * *

(b) The rated power of a transmitter employed in these radio services shall not exceed the values shown in the following tabulation:

Frequency range (MHz):	*Rated power output (watts)*
Below 30	50
30 to 50	350
50 to 70	50
76 to 512	[1] 250
512 to 10,000	[2] 20
Above 10,000	[2] 10

[1] Transmitter rated power output is limited to a maximum of 25 watts on frequencies in the bands 454.6625–455.000 MHz and 459.6625–460.000 MHz.

[2] In the bands 5,925–6,425 MHz and 27,500–29,500 MHz the maximum effective isotropically radiated power of the transmitter and associated antenna of a station in the fixed service shall not exceed +55 dBW. This limitation is necessary to minimize the probability of harmful interference to reception in this band by space stations in the fixed-satellite service. In the band 2,150–2,162 MHz up to 100 watts may be authorized pursuant to Section 21.904.

* * * * * * * * *

5. In § 21.108(e) the last two sentences are amended to read as follows:

§ 21.108 Directional antennas

* * * * * * * * *

(e) * * *

* * * [Methods of calculating azimuths to be avoided may be found in: CCIR Report # 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for Controlled Inference with Geostationary Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Volume

48, No. 10, pages 3387–3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC–7201, FCC, Washington, D.C., 1972. This latter report and a card deck of the program itself are available through the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151, as report numbers PB–211–500, and PB–211–501.] * * *

6. In § 21.701, par (a) & footnotes 4 & 5 are amended, footnotes 9 through 13 added, and new pars (j) & (k) added to read as follows:

§ 21.701 Frequencies

(a) Frequencies in the following bands are available for assignment to fixed radio stations in the Point-to-Point Microwave Radio Service:

2,110–2,130 MHz [1 3 7]
2,160–2,180 MHz [1 2 3]
3,700–4,200 MHz [5 6]
5,925–6,425 MHz [5 6 8]
10,700–11,700 MHz [5 9]
13,200–13,250 MHz [4]
17,700–19,700 MHz [5 10]
21,200–22,000 MHz [4 11 12 13]
22,000–23,600 MHz [4 11 12]
27,500–29,500 MHz [5]
31,000–31,200 MHz [4]
38,600–40,000 MHz [4]

* * * * * * * *

[4] Frequencies in this band are shared with fixed and mobile stations licensed in other services.

[5] Frequencies in this band are shared with stations in the fixed-satellite service.

* * * * * * * *

[9] The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

[10] The band segment 18,360–19,040 MHz is shared with operational fixed stations.

[11] Frequencies in this band are shared with Government stations.

[12] Assignments to common carriers in this band are normally made in the segments 21.2–21.8 GHz and 22.4–23.0 GHz and to operational fixed users in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Assignments may be made otherwise only upon a showing that no interference free frequencies are available in the appropriate band segments.

[13] Frequencies in this band are shared with stations in the earth exploration satellite service (space to earth).

* * * * * * *

(j) The band 17,700–19,700 MHz is allocated for both wide band (over 100 MHz) and narrow band (100 MHz or under) users. Assignments for wide band users shall be made on the basis of the following frequency plan consisting of eight two-way channels, each 220 MHz wide:

Channel group A		Channel group B	
Channel No.	Assigned frequency, polarized vertically (V) or horizontally (H)	Channel No.	Assigned frequency, polarized vertically (V) or horizontally (H)
1-A	17,810 V	1-B	19,590 V
2-A	17,810 H	2-B	19,590 H
3-A	18,030 V	3-B	19,370 V
4-A	18,030 H	4-B	19,370 H
5-A	18,250 V	5-B	19,150 V
6-A	18,250 H	6-B	19,150 H
7-A	18,470 V	7-B	18,930 V
8-A	18,470 H	8-B	18,930 H

Where narrow bandwidths are required, the lowest available frequency shall be selected in the band segment 18,580–18,700 MHz and/or 18,700–18,820 MHz. If frequencies of the desired (narrow) bandwidth cannot be accommodated in

these band segments, application may be made for the lowest available frequency in the spectrum assigned to wide band channels 7 or 8 (i.e. 18,360–18,580 MHz or 18,820–19,040 MHz). Channels 7 and 8 may not be assigned for wide band use if any other wide band channels are available. If channels 7 and 8 are proposed for either wide or narrow band use, applicant shall make a statement that no alternative frequencies of the desired bandwidth are available in the band. Polarizations other than those specified above for wide band channels may be assigned if such use will not inhibit full development of all channels in the band.

(k) Assignments in the Band 38,600–40,000 MHz shall be according to the following frequency plan:

Channel group A		Channel group B	
Channel No.	Frequency band limits MHz	Channel No.	Frequency band limits MHz
1-A	38,600–38,650	1-B	39,300–39,350
2-A	38,650–38,700	2-B	39,350–39,400
3-A	38,700–38,750	3-B	39,400–39,450
4-A	38,750–38,800	4-B	39,450–39,500
5-A	38,800–38,850	5-B	39,500–39,550
6-A	38,850–38,900	6-B	39,550–39,600
7-A	38,900–38,950	7-B	39,600–39,650
8-A	38,950–39,000	8-B	39,650–39,700
9-A	39,000–39,050	9-B	39,700–39,750
10-A	39,050–39,100	10-B	39,750–39,800
11-A	39,100–39,150	11-B	39,800–39,850
12-A	39,150–39,200	12-B	39,850–39,900
13-A	39,200–39,250	13-B	39,900–39,950
14-A	39,250–39,300	14-B	39,950–40,000

These channels are assigned for use within a rectangular service area to be described in the application by the maximum and minimum latitudes and longitudes. Such service area shall be as small as practicable consistent with the local service requirements of the carrier. These frequency plans may be subdivided as desired by the licensee and used within the service area as desired without further authorization subject to the terms and conditions set forth in Section 21.711. These frequencies shall be assigned only where it is shown that the applicant will have a reasonable projected requirement for a multiplicity of service points or transmission paths within the area.

7. In § 21.703 part (g) is revised to read as follows:

§ 21.703 Bandwidth and emission limitations

* * * * * * *

(g) The maximum bandwidth authorized shall not exceed that reasonably necessary to provide the proposed service but in no event shall it exceed the limits set forth below:

Frequency Band (MHz):	*Maximum authorized bandwidth (MHz)*
2,110 to 2,130	3.5
2,160 to 2,180	3.5
3,700 to 4,200	20.0
5,925 to 6,425	30.0
10,700 to 11,700	40.0
13,200 to 13,250	25.0
17,700 to 19,700	220.0
21,200 to 22,000	100.0
22,000 to 23,600	100.0
27,500 to 29,500	220.0
31,000 to 31,200	50.0
38,600 to 40,000	50.0

* * * * * * *

8. New § 21.710 is added to read as follows:

§ 21.710 Limitations on path lengths and channel loading.

(a) Frequencies in the following bands may not be used on transmission paths shorter than the indicated distances.

Frequency band (MHz):	*Minimum path distances (in kilometers)*
2,110 to 2,130	5
2,160 to 2,180	5
3,700 to 4,200	17
5,925 to 6,425	17
10,700 to 11,700	5

(b) Exception to the limits in paragraph (a) may be made by the Commission when a showing (with supporting facts) is made that use of a frequency in conformance with the rule would entail excessive cost in construction or maintenance or would otherwise create substantial difficulties. The alternate frequency proposal must be shown to be consistent with good engineering practice under the circumstances. Stricter adherence to these limitations is expected in areas of general frequency congestion. The distance limitation does not apply to a frequency which is power split if one transmission path utilizing that frequency meets the minimum distance requirement.

(c) Except for video transmission, an application for an initial working channel over a given route will not be accepted for filing where the anticipated loading (within five years or other period subject to reasonable projection) is less than the minimum specified for the following frequency bands. Absent extraordinary circumstances, applications proposing additional frequencies over existing routes will not be granted unless it is shown that the traffic load will shortly exhaust the capacity of the existing equipment.

Frequency Band (MHz)	Minimum No. voice channels or (4 kHz or equivalent)	Minimum digital data loading (in Mb/s)
3,700 to 4,200	900	10
5,925 to 6,425	900	10
10,700 to 11,700 (20 MHz bandwidth or less)	240	5
10,700 to 11,700 (bandwidth more than 20 MHz)	900	10

Where transmitters employing digital modulation techniques are designed to be used so that two may simultaneously operate on the same frequency over the same path, the minimum number of voice channels specified above is reduced from 900 to 500 per transmitter for the bands 3,700–4,200 MHz, 5,925–6,425 MHz, and 10,700–11,700 MHz.

9. New § 21.711 is added to read as follows:

§ 21.711 Special requirements for operation in the band 38,600–40,000 MHz.

Assigned frequency channels in the band 38,600–40,000 MHz may be subdivided and used anywhere in the authorized service area, subject to the following terms and conditions:

(a) No interference shall be caused to a previously existing station operating in another authorized service area.

(b) The Commission's Engineer in Charge of the radio district in which the intended operation is located shall be notified prior to the commencement of operation of each frequency path. Such notice shall include:

(1) The authorized call sign, transmitter station location number (assigned by the carrier in sequence of use beginning with number one) and transmitting station coordinates;

(2) Receiving station location number and coordinates;

(3) The exact frequency or frequencies to be used (which shall be considered the assigned frequency or frequencies); and

(4) Anticipated date of commencement of operation.

(c) The Engineer in Charge shall be notified within 10 days of the termination of any operation. The notice shall contain similar information to that contained in the notice of commencement of operation.

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(d) Each operating station shall have posted a copy of the service area authorization and a copy of the notification provided to the Engineer in Charge.

(e) Twice each year, no later than January 31 and July 31, the Commission and the Engineer in Charge shall be provided a complete list (in tabular form) of all operations in each authorized service area (listing information as contained in the notices) current as of the previous January 1 or July 1. If no change has occurred since the previous list was filed, a statement to that effect will be sufficient.

(f) The antenna structure height employed at any location shall not exceed the criteria set forth in Section 17.7 of this chapter unless, in each instance, authorization for use of a specific maximum antenna structure for each location has been obtained from the Commission prior to the erection of the antenna.

10. In § 21.801 pars (a) and (d) are amended as follows:

§ 21.801 Frequencies.

(a) Frequencies in the following bands are available for assignment to television pickup and television nonbroadcast pickup stations in this service:

6,425–6,525 MHz
11,700–12,200 MHz [2]
13,200–13,250 MHz [1]
21,200–22,000 MHz [1 2 4 5]
22,000–23,600 MHz [1 2 5]

[1] This frequency band is shared with fixed and mobile stations licensed under Part 21 and other Parts of the Commission's Rules.
[2] This frequency band is shared with Government stations.
[3] This frequency band is shared, on a secondary basis, with stations in the broadcasting-satellite and fixed-satellite services.
[4] This frequency band is shared with stations in the earth-exploration satellite service.
[5] Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,000 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the normally assigned band segments.

* * * * * * *

(d) Frequencies in the following bands are available for assignment to television STL stations in this service:

3,700–4,200 MHz [1 3]
5,925–6,425 MHz [1 5]
10,700–11,700 MHz [1 6]
13,200–13,250 MHz [2]
21,200–22,000 MHz [2 4 7 8]
22,000–23,600 MHz [3 4 8]

[1] This frequency band is shared with stations in the Point to Point Microwave Radio Service and, in United States Possessions in the Caribbean area, with stations in the International Fixed Public Radiocommunications Services.
[2] This frequency band is shared with fixed and mobile stations licensed under Part 21 and other parts of the Commission's Rules.
[3] This frequency band is shared with space stations (space to earth) in the fixed-satellite service.
[4] This frequency band is shared with Government stations.
[5] This frequency band is shared with earth stations (earth to space) in the fixed satellite services.
[6] The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.
[7] This frequency band is shared with space stations (space to earth) in the earth exploration satellite service.
[8] Assignments to common carriers in this band are normally made in the segments 21,200–21,800 MHz and 22,400–23,000 MHz and to operational fixed users in the segments 21,800–22,400 MHz and 23,000–23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the appropriate band segments.

* * * * * * *

11. In § 21.804 par. (d) is amended to read as follows:

§ 21.804 Bandwidth and emission limitations.

* * * * * * *

(d) Maximum bandwidths in the following frequency bands shall not exceed the limits set forth below:

Frequency band MHz:	*Maximum authorized bandwidth (MHz)*
3,700 to 4,200	20
5,925 to 6,575	30
10,700 to 12,200	40
13,200 to 13,250	25
22,000 to 23,600	100

* * * * * * *

FCC 74-638

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT TO SECTION 76.51 OF THE COMMISSION'S RULES AND REGULATIONS	Docket No. 19990 RM-2210

REPORT AND ORDER

(Adopted June 19, 1974; Released June 24, 1974)

BY THE COMMISSION: COMMISSIONER HOOKS CONCURRING IN THE RESULT.

1. By *Notice of Proposed Rule Making*, FCC 74-321, 46 FCC 2d 172 (1974), the Commission instituted a rule making to ascertain whether Newark, New Jersey should for purposes of the Cable Television Rules, be included in the New York, New York-Linden-Paterson, New Jersey designated television market (#1) (Section 76.51(a) of the Commission's Rules).

2. The primary proponent of the subject rule change is Blonder-Tongue Broadcasting Corporation, permittee of subscription television Station WBTB-TV, Newark, New Jersey. Blonder points out that the 35-mile zones of the designated communities of the New York, New York-Linden-Paterson, New Jersey market totally encompass the 35-mile zone of Newark, which results in the anomaly of a smaller television market, Newark, wholly contained within the major market of New York-Linden-Paterson. This anomaly, Blonder asserts, will have serious economic and competitive effects on Station WBTB-TV. Pursuant to the Rules, all Linden, Paterson and New York City television signals must be carried on any cable system located within the 35-mile zone of any one of these communities. However, since Newark is not designated as part of the New York-Linden-Paterson market, Station WBTB-TV will be entitled to carriage only on cable systems located within the 35-mile zone of Newark. Additionally, while the Rules confer syndicated programming exclusivity rights on the licensees of the New York City, Linden and Paterson television stations with respect to their non-network programming, such rights would not inure to Station WBTB-TV because it is not licensed to a designated major market community. Blonder submits that Newark qualifies for inclusion as a designated community in the number one television market and requests that the Commission amend Section 76.51(a) of the Rules to add Newark as one of the designated communities of the first television market.

3. The proposed addition of Newark to the New York-Linden-Paterson market is opposed by the New Jersey Coalition for Fair Broadcasting, a citizen group concerned with the needs and problems of New Jersey residents and with the performance of the broadcast media. The Coalition argues that before the subject proposed amend-

ment is adopted by the Commission, consideration should be given to re-evaluating the present allocation scheme as it concerns broadcast stations in the Philadelphia-New Jersey-NewYork corridor and how Newark should fit within any adjustments which may be required.

4. Comments were also filed by Pay Television Corporation, an organization engaged in the promotion of the utilization of over-the-air subscription television and by Kenneth A. Gibson, Mayor of Newark, New Jersey. Pay Television requests the Commission to specifically confine its action to cable television and by express language exclude its applicability to over-the-air subscription television. Its concern is that this change, read in conjunction with the limitation in the subscription television rules that there be only one STV authorization granted "in any community" (Section 73.642), might preclude the licensing of additional STV stations to the New York television market. Mayor Gibson requests that the Commission require Station WBTB–TV to reaffirm its commitment to conduct local programming which was made a condition to the grant of the station's license.

5. In *Cable Television Report and Order*, FCC 72–108, 36 FCC 2d 143, 176 (1972), the Commission defined a hyphenated television market as one characterized by more than one major population center supporting all stations in the market but with competing stations licensed to different cities within the market area. Based on these standards, we have determined that Newark qualifies for inclusion as a designated community in the number one television market. The cities of New York, Linden, Paterson, and Newark comprise a single market in which television broadcast stations licensed to them must compete. Therefore, each of those cities should be designated to the same television market.

6. The objection of the New Jersey Coalition for Fair Broadcasting is without merit. In a separate proceeding the Coalition has petitioned the Commission to institute a public inquiry with regard to the need for adequate television service for the State of New Jersey and the means of obtaining such service (RM–2345). That forum, not the instant one, is the proper place to evaluate the present television station allocation scheme.

7. With regard to the comments of Pay Television Corporation and Mayor Gibson, we need merely point out that this action affects Part 76 of the Commission's Rules only, and has no effect on Part 73 which deals with over-the-air subscription television service. Additionally, the conditions upon which the license of Station WBTB–TV were granted remain in effect, and we presume that the Station will abide by them.

8. Authority for the rule amendment adopted herein is contained in Section 2, 3, 4(i) and (j), 301, 303, 307, 308, and 309 of the Communications Act of 1934 as amended.

Accordingly, IT IS ORDERED, That effective August 2, 1974, Part 76 of the Commission's Rules and Regulations IS AMENDED as set forth in the attached Appendix. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

APPENDIX

Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 76—Cable Television Service

1. In § 76.51, paragraph (a) is amended, as follows:

§ 76.51 Major television markets.

* * * * * * *

(1) New York, New York-Linden-Paterson-Newark, New Jersey

* * * * * * *

FCC 74-699

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF PART 0 AND 2 OF THE RULES RELATING TO EQUIPMENT AUTHORIZATION OF RF DEVICES	Docket No. 19356

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 2, 1974)

BY THE COMMISSION:

1. The Commission has for consideration petitions for reconsideration of the amendment of our rules relating to equipment authorization of RF Devices. The history of this proceeding is described in the Report and Order adopting the revised rules (FCC 74-113 released February 15, 1974, 39 F.R. 5912 (February 18, 1974)).

2. On March 27, 1974 the Commission stayed the effective date of the revised rules on the labelling requirements. Pending our determination on these petitions for reconsideration and for the reasons stated in our initial stay action (FCC 74-285), the Commission is further staying the effective date of the revised rules on the labelling requirements, i.e., 2.925, 2.969, 2.1003 and 2.1045.

3. IN VIEW OF THE FOREGOING, IT IS ORDERED, THAT the effective date of Sections 2.925, 2.969, 2.1003 and 2.1045 is STAYED until August 2, 1974.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-695

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
SEMINOLE CABLEVISION, INC.	CAC-2477
SANFORD, FLA.	FL188
SEMINOLE CABLEVISION, INC.	CAC-2478
CASSELBERRY, FLA.	FL191
SEMINOLE CABLEVISION, INC.	CAC-2479
WINTER SPRINGS, FLA.	FL190
For Certificates of Compliance and Request for Special Relief	

MEMORANDUM OPINION AND ORDER

(Adopted June 26, 1974; Released July 8, 1974)

BY THE COMMISSION:

1. Seminole Cablevision, Inc., operates cable television systems at the above-captioned communities, all located within the Orlando-Daytona Beach, Florida, major television market (#55). The systems have already received certificates of compliance [1] to provide the following television broadcast signals:

WSWB-TV (Ind., Channel 35) Orlando, Florida
WDBO-TV (CBS, Channel 6) Orlando, Florida
WFTV (ABC, Channel 9) Orlando, Florida
WMFE-TV (Educ., Channel 24) Orlando, Florida
WESH-TV (NBC, Channel 2) Daytona Beach, Florida
WUFT (Educ., Channel 5) Gainesville, Florida
WUSF-TV (Educ., Channel 16) Tampa, Florida
WEDU (Educ., Channel 3) Tampa, Florida
WCIX-TV (Ind., Channel 6) Miami, Florida
WLTV (Spanish Lang., Channel 23) Miami, Florida
WTOG (Ind., Channel 44) St. Petersburg, Florida

In its present application, Seminole requests special relief in order to add the following signal:

WTVT (CBS, Channel 13) Tampa, Florida

2. As noted above, Seminole has been authorized to carry two distant independent signals, WCIX-TV (Channel 6, Miami, Florida), and WTOG-TV (Channel 44, Tampa, Florida). WTOG-TV is available off the air, whereas the signal of WCIX-TV must be delivered by common carrier microwave service. On March 13, 1974, the Commission granted the applications [2] of Seminole's parent company, American Television and Communications Corporation, for permits to construct a multi-station common carrier route for the purpose of delivering Stations WCIX-TV and WLTV to Seminole and other cable

[1] CAC-77, CAC-140, and CAC-141 were granted in *Seminole Cablevision, Inc.*, FCC 73-77, 39 FCC 2d 96 (1973), and FCC 73-78, 39 FCC 2d 98 (1973).

[2] American Television and Communications Corporation (ATC), point-to-point microwave applications, File Nos. 1123-CI-P-73, *et al.*

systems located along the east coast and in the central area of Florida. Notwithstanding this action, Seminole maintains that the signal of WCIX–TV will not be available by microwave carriage for at least 12–16 months because of difficulties in obtaining equipment from the manufacturer as well as the time needed to construct the microwave stations. During this period, Seminole subscribers will continue to receive only one distant independent signal, that of WTOG–TV. In addition, Seminole cites the commencement of operations of local independent WSWB–TV (Channel 35, Orlando, Florida), and the anticipated similarity between its programming and that of WTOG–TV as further reason for its request for special relief. While recognizing that carriage of WTVT is inconsistent with our Rules because it is a distant network station, Seminole assures us that such carriage will be in strict compliance with the network and syndicated program exclusivity requirements of Sections 76.93 and 76.151(b) of the Rules. In addition, Seminole emphasizes that carriage of WTVT will be on an interim basis only. As soon as the signal of WCIX–TV becomes available to Seminole, it will stop carriage of WTVT.

3. In paragraph 18 of the *Reconsideration of Cable Television Report and Order*, FCC 72–530, 36 FCC 2d 326, 355 (1972), we recognized that unusual circumstances relating to distant signal carriage might present themselves. Although there we were primarily concerned with the costs involved in obtaining distant independent signals, we have recently dealt with a situation much akin to the present one. In *Lyons CATV, Inc.*, FCC 73–1137, 43 FCC 2d 910 (1973), we granted special relief to allow the temporary carriage of the non-network programming of a distant network affiliate because of the cable system's inability to obtain microwave service for the importation of one of its two authorized distant independent signals. Therein, we recognized that the rationale of Paragraph 18 "favors granting special relief, where necessary, to permit cable systems to meet the minimum levels of signal carriage diversity permitted by the carriage rules" *id.* at 911. See also *Vilas Cable, Inc.*, FCC 73–379, 40 FCC 2d 637 (1973); *Video Link, Ltd.*, FCC 74–419, —— FCC 2d —— (1974).

4. In these circumstances, we believe the public interest will be served by granting Seminole's request for special relief, subject to the condition that carriage of WTVT be in accordance with the network and syndicated program exclusivity requirements of our Rules. However, we will limit carriage of WTVT to one (1) year from the release date of this Memorandum Opinion and Order, or until the signal of the authorized distant independent WCIX–TV becomes available to Seminole, whichever occurs first.

In view of the foregoing, we find that grant of the above-captioned applications and request for special relief would be consistent with the public interest.

Accordingly, IT IS ORDERED, That the applications for certificates of compliance and request for special relief (CAC–2477, 2478, 2479) filed by Seminole Cablevision, ARE GRANTED and the appropriate certificates of compliance will be issued.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-670

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re TELEPROMPTER OF GREAT FALLS, INC., GREAT FALLS AND BLACK EAGLE, MONT. Requests for Special Relief	CSR-57 (MT019) CSR-58 (MT037) CSR-94 (MT019)

MEMORANDUM OPINION AND ORDER

(Adopted June 25, 1974; Released July 8, 1974)

BY THE COMMISSION:

1. On April 14, 1972, and April 18, 1972, Garryowen Cascade TV, Inc., licensee of Television Broadcast Station KRTV, Great Falls, Montana, filed two documents each captioned "Petition for Special Relief" (CSR-57 and 58) directed against TelePrompTer of Great Falls, Inc., operator of cable television systems at Great Falls and Black Eagle, Montana. Garryowen requested that same day network program exclusivity be extended to KRTV by these cable television systems. On April 17, 1972, Harriscope Broadcasting Corporation, licensee of Station KFBB-TV, Great Falls, Montana filed a "Petition for Special Relief" (CSR-94) seeking the same relief. TelePrompTer opposed these petitions. These pleadings were filed prior to the *Reconsideration of Cable Television Report and Order*, FCC 72-530, 36 FCC 2d 326, and during a period when the rules required that mountain time zone cable television systems generally had to provide only simultaneous network program exclusivity rather than same day exclusivity. In July, 1972, the Commission adopted the *Reconsideration of Cable Television Report and Order*, *supra*, which amended, *inter alia*, Section 76.93(b) of the Rules to reimpose the same day network program exclusivity obligation on cable television systems serving communities located within the mountain time zone[1]. On September 12, 1972, following the adoption of the *Reconsideration*, TelePrompTer filed a "Supplemental Opposition and Request for Special Relief" asking that the Commission waive Section 76.93(b) to permit it to extend only simultaneous exclusivity to KRTV and KFBB-TV. Harriscope Broadcasting and Garryowen filed oppositions to TelePrompTer's request for special relief; and on November 1, 1972, in

[1] Section 76.93(b) of the Rules provides in pertinent part:
"Notwithstanding the provisions of paragraphs (a) of this Section, on request of a television station licensed to a community in the Mountain Standard Time Zone that is not one of the designated communities in the first 50 major television markets, a cable television system shall refrain from duplicating any network program broadcast by such station on the same day as its broadcast by the stations."

response to their pleadings, TelePrompTer filed a "Consolidated Reply to Opposition to Request for Special Relief."

2. TelePrompTer operates 12 channel cable television systems at the above-captioned communities, and provides the following signals to approximately 8,400 subscribers:

KFBB–TV (ABC, CBC, Channel 5), Great Falls, Montana
KRTV (CBS, NBC, Channel 3), Great Falls, Montana
KBLL–TV (ABC, NBC, Channel 12), Helena, Montana
KCPX–TV (ABC, Channel 4), Salt Lake City, Utah
KUED (Educ., Channel 7), Salt Lake City, Utah
KHQ–TV (NBC, Channel 6), Spokane, Washington
KREM–TV (ABC, Channel 2), Spokane, Washington
KXLY–TV (CBS, Channel 4), Spokane, Washington
CJOC–TV (CBC, Channel 7), Lethbridge, Canada

3. TelePrompTer argues that same day network program exclusivity should not apply against the programming of television broadcast stations which are located in the mountain time zone. TelePrompTer contends that the non-simultaneous network program duplication problems which KRTV and KFBB–TV encounter are caused only by the station's practice of taping network programs broadcast by Salt Lake City, Utah network affiliates and delaying the broadcast of those programs, and not because of the systems' importation of distant signals from another time zone.

4. We must reject TelePrompTer's arguments. In Paragraph 29 of the *Reconsideration*, and in *See-More Cable, Inc.*, FCC 74–481, —— FCC 2d ——, we stated that same day network exclusivity in the mountain time zone is justified not only because of cable television systems' importation of signals from outside the zone, but also because television stations in that time zone follow no uniform network program distribution pattern. Both of the aforementioned justifications for same day exclusivity apply in this case, and thus a significant amount of KRTV's and KFBB–TV's network programming would be unprotected if we granted TelePrompTer's request. Moreover, we note that TelePrompTer neither argued nor made a showing that its cable systems will be economically injured if we rule that they must extend same day exclusivity to the network programming broadcast by KRTV and KFBB–TV.

5. Our ruling on TelePrompTer's request for special relief renders Garryowen's and Harriscope Broadcasting's petitions moot. They therefore shall be dismissed.

In view of the foregoing, we find that grant of TelePrompTer's "Supplemental Opposition and Request for Special Relief" would not be consistent with the public interest.

Accordingly, IT IS ORDERED, That the "Supplemental Opposition and Request for Special Relief" filed by TelePrompTer of Great Falls, Inc., on September 12, 1972, IS DENIED.

IT IS FURTHER ORDERED, That TelePrompTer of Great Falls, Inc., IS DIRECTED to comply with the requirements of Sections 76.91 and 76.93 of the Commission's Rules on its cable television systems at Great Falls and Black Eagle, Montana, within thirty (30)

days of the release date of this Memorandum Opinion and Order.

IT IS FURTHER ORDERED, That the "Petition for Special Relief" (CSR–57–58) filed by Garryowen Cascade TV, Inc., on April 14, 1972, and on April 18, 1972, ARE DISMISSED.

IT IS FURTHER ORDERED, That the "Petition for Special Relief" (CSR–94) filed by Harriscope Broadcasting Corporation on April 17, 1972, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

FCC 74-671

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re
THETA CABLE OF CALIFORNIA, ANAHEIM HILLS, ANAHEIM, CALIF.
Request for Special Temporary Authority

MEMORANDUM OPINION AND ORDER

(Adopted June 25, 1974; Released July 8, 1974)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT

1. On December 4, 1973, Theta Cable of California filed an application for a Certificate of Compliance (CAC-3349) for proposed cable television service at Anaheim, California.[1] On January 15, 1974, Theta filed a "Request for Special Temporary Authority" to commence cable television operations in the Anaheim Hills section of Anaheim, California. Neither Theta's application nor its request is opposed.

2. A detailed statement of facts is useful in evaluating Theta's request. Off-the-air reception of television broadcast signals is purportedly poor throughout all areas of Anaheim Hills, and non-existent in about thirty percent of the area, because hilly terrain allegedly dominates this section of Anaheim, and because deed restrictions prevent the installation of outdoor antennas in Anaheim Hills. In view of these facts, the homeowners association of Anaheim Hills contracted for the installation of what they believed to be an MATV system. The MATV system served approximately 550 homes before it went into bankruptcy in August 1973. The homeowners association now wants Theta to serve Anaheim Hills. Theta therefore has applied for special temporary authorization to serve Anaheim Hills pending Commission action on its application for a certificate of compliance for the entire city of Anaheim.

3. Theta proposes to distribute the following "must carry" signals at Anaheim Hills and Anaheim, California:

KBSC-TV (Ind., Channel 52) Corona, California
KLXA-TV (Ind., Channel 40) Fontana, California
KOCE-TV (Educ., Channel 50) Huntington Beach, California
KABC-TV (ABC, Channel 7) Los Angeles, California
KCET (Educ., Channel 28) Los Angeles, California
KCOP (Ind., Channel 13) Los Angeles, California

[1] We do not rule on Theta's pending application for a certificate of compliance because the application involves issues not relevant to the above-captioned request for special temporary authority.

KHJ–TV (Ind., Channel 9) Los Angeles, California
KLCS (Educ., Channel 58) Los Angeles, California
KMEX–TV (Ind., Channel 34) Los Angeles, California
KNBC (NBC, Channel 4) Los Angeles, California
KNXT (CBS, Channel 2) Los Angeles, California
KTLA (Ind., Channel 5) Los Angeles, California
KTTV (Ind., Channel 11) Los Angeles, California
KVST (Educ., Channel 68) Los Angeles, California
KWHY–TV (Ind., Channel 22) Los Angeles, California
KHOF–TV (Ind., Channel 30) San Bernardino, California

Theta argues that Commission precedent, particularly *Weippe Cable Television Company, Inc.*, FCC 72–846, 37 FCC 2d 334. supports a special temporary authorization allowing Theta to provide the Anaheim Hills homes that were served by the bankrupt MATV system at least with identical service. Additionally, Theta contends that since all of the above-listed signals must be carried on request, the Commission should permit it to carry these signals, rather than the more limited signal complement offered by the former MATV system. Theta also maintains that inasmuch as Anaheim Hills residents can receive satisfactory television service only via cable, it should be allowed to serve all of Anaheim Hills, as distinguished from the limited number of residents previously receiving MATV service.

4. The Commission is reluctant to withdraw service which may have been initiated illegally when no public interest consideration dictates such disruption, and when there appear to be mitigating circumstances. See *Weippe Cable Television Company, Inc.*, *supra* and *Belle Glade Community Television Co., Inc.* FCC 73–1211, 43 FCC 2d 988. Admittedly, the signals which Theta proposes to offer to the residents of Anaheim Hills are more numerous than those formerly provided by the MATV operator, but Theta's proposed signal complement consists entirely of signals which must be carried on request. Limiting Theta to some of these signals would discriminate unfairly against television broadcast stations with equal carriage rights. We therefore authorize Theta to carry all of the above-listed signals to the homes that previously received MATV service, pending Commission action on Theta's application for a certificate of compliance. We will not, however, authorize Theta to extend service to those residents who were not customers of the MATV service. To do so would go well beyond our policy of not disrupting established service.

In view of the foregoing, the Commission finds that a partial grant of the requested special temporary authority would be consistent with the public interest.

Accordingly, IT IS ORDERED, that the "Request for Special Temporary Authority" filed January 15, 1974. by Theta Cable of California IS GRANTED to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*